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TOWN OF BROOKSVILLE
ANIMAL CONTROL & NOISE ORDINANCE

Section 1. Purposes.

The purposes of this ordinance are to require that the owners of all animals kept in the Town of Brooksville control them at all times so that those animals will not injure persons or other animals, damage property, unnecessarily annoy or disturb any person, or transmit disease. This ordinance is adopted under the town's Home Rule Authority in the interest of the health, safety and general welfare of its residents.

Section 2. Definitions.

a) "Animal Control Officer". A person appointed by the selectmen pursuant to 7 M.R.S.A. Section 3947, to serve at their pleasure for terms of one year, and to perform the duties under this ordinance, and as specified in that statute, at a rate of pay to pay established by the selectmen. The Animal Control Officer shall be responsible for the enforcement of this ordinance and of all laws related to dogs, cats, domesticated and undomesticated animals, including those contained in Title 7 M.R.S.A., Chapter 725.

b) "At Large". Off the premises of the owner and not under the control of any person by means of personal presence and attention, or ability to manipulate and command the conduct of the animal.

c) "Dangerous Dog". A dog which had bitten a person who was not a trespasser on the owner's premises at the time of the incident; or a dog which causes a reasonable person, acting in a peaceable manner, outside of the owner's premises, to be put in apprehension of imminent bodily harm.

d) "Dog". Both male and female dogs, whether or not neutered or spayed.

e) "Owner". Any person or entity owning, keeping, harboring or having custody or possession of an animal.

Section 3. License required. The owners of all dogs kept or harbored in the Town of Brooksville, and the managers of all kennels, shall license and tag them in accordance with 7 M.R.S.A. Sections 3942 to 3944, as amended.

Section 4. Barking Dogs and Other Animal Noises.

[A] No owner or keeper of any dog or other animal kept within the Town of Brooksville shall allow such dog or animal to unnecessarily annoy or disturb any person by loud and continued or repeated barking or other loud or unusual noises.

[B] Upon written complaint of the person disturbed - signed and sworn to by that person before a notary public - the Animal Control Officer, constable or other duly qualified state, county or municipal law enforcement officer may investigate the allegations of the complaint. If the officer or constable finds that there is valid grounds for the complaint, the officer or constable shall serve a written warning upon the owner or keeper, notifying that person that steps must be taken to ensure that such annoyance or disturbance immediately ceases. The written warning shall be in a form approved by the selectmen. The warning shall be served (a) by delivering a copy of the warning to the owner or keeper, in hand, (b) by leaving a copy with a person of suitable age and discretion at the premises where the dog is kept or where the owner or keeper resides, or (c) by mailing a copy to the owner or keeper at the address shown on the license application for that dog or animal. Any owner or keeper who allows such annoyance or disturbance to continue after notice has been served commits a civil violation subject to the penalties set forth in this Ordinance.

Section 5. Animals at Large.

[A] It is unlawful for any dog or other domesticated animal, licensed or unlicensed, to run at large, except when used for hunting purposes by a licensed hunter. Any animal at large, including any stray or abandoned animals, shall be seized, restrained and impounded by the Animal Control Officer and taken to an animal control shelter certified by the town pursuant to 7 M.R.S.A. Section 3949. The Animal Control Officer shall also ensure that any injured animal is given proper medical attention. If the owner is known to the Animal Control Officer, he or she shall take the animal to its owner.

[B] At the time of impoundment at an animal control shelter, the Animal Control Officer shall provide the shelter with a sheet containing the following information: (1) the breed, color, sex and general condition of the animal, (2) whether the animal is licensed or unlicensed, (3) the name of the owner or keeper, if known, (4) the number and description of violations, (5) the date of impoundment, and (6) instructions setting forth the conditions under which the animal may be released to the owner. Another copy of that sheet shall be delivered to the town clerk to be posted at the Brooksville Town Office.

[C] Whenever possible, the Animal Control Officer and the manager of the animal control shelter shall, within 48 hours, attempt to contact the animal's owner and inform him, her or it of the description and location of the animal. The owner is responsible for paying all costs of board at the shelter, in addition to any fines owed under this Ordinance. If any animal so impounded is not claimed by its owner within eight (8) days of impoundment, the shelter may dispose of the animal by adoption or euthanasia in a proper and humane manner consistent with the applicable laws of the State of Maine.

Section 6. Dangerous Dogs. Any person who is assaulted by a dog without provocation, or any person witnessing an unprovoked assault against a person or a domesticated animal, within 10 days of the assault, may file a written complaint with the Animal Control Officer that he or she believes that the dog is dangerous or vicious. The Animal Control Officer may file the complaint in the District Court pursuant to 7 M.R.S.A. Section 3952.

Section 7. Damage Done by Dogs. Any person whose property has been damaged by a dog, and who wishes to collect payment for such damage, may file a complaint with the Brooksville Selectmen pursuant to 7 M.R.S.A. Section 3961 et seq., and the selectmen shall investigate and make a report as provided in that statute.

Section 8. Violations and Penalties.

[A] Any person found in violation of this Ordinance shall be guilty of a civil violation punishable by a fine of \$25.00 for the first offense, \$100.00 for the second offense, and \$250.00 for each subsequent offense. These fines are in addition to the fines and damages that may be imposed against the owner of a dangerous dog under 7 M.R.S.A. Section 3952. The Brooksville Selectmen, acting in conjunction with the Animal Control Officer, have authority to assess and collect such fines and to enter into consent agreements with the owner or keeper. If any fine cannot be so collected, the town may file a complaint in the Maine Fifth District Court. If the town prevails in that action, in addition to recovery of such fines for the benefit of the Town of Brooksville, the town shall be awarded its reasonable attorney fees and costs.

[B] All license fees retained by the town, and all fines collected, shall be kept in a separate bank account and used for the payment of the salary of the Animal Control Officer and for the costs of animal control, enforcement of laws, care of injured or abandoned animals, and the support of one or more animal control shelters, as provided in 7 M.R.S.A. Section 3945.

FLOODPLAIN MANAGEMENT ORDINANCE

TOWN OF BROOKSVILLE, MAINE

ENACTED: June 23, 2016
Date

EFFECTIVE: June 23, 2016
Date

CERTIFIED BY: 
Signature

~~CERTIFIED BY:~~ JOHN H. GRAY
Print Name

SELECTMAN
Title

Affix Seal



FLOODPLAIN MANAGEMENT ORDINANCE

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ARTICLE I-PURPOSE AND ESTABLISHMENT

Certain areas of the Town of Brooksville, Maine are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968.

Therefore, the Town of Brooksville, Maine has chosen to become a participating community in the National Flood Insurance Program, and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this Floodplain Management Ordinance.

It is the intent of the Town of Brooksville, Maine to require the recognition and evaluation of flood hazards in all official actions relating to land use in the floodplain areas having special flood hazards.

The Town of Brooksville has the legal authority to adopt land use and control measures to reduce future flood losses pursuant to Title 30-A MRSA, Sections 3001-3007, 4352, 4401-4407, and Title 38 MRSA, Section 440.

The National Flood Insurance Program, established in the aforesaid Act, provides that areas of the Town of Brooksville having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. This Ordinance establishes a Flood Hazard Development Permit system and review procedure for development activities in the designated flood hazard areas of the Town of Brooksville, Maine.

The areas of special flood hazard, Zones A, AE, and VE for the Town of Brooksville, Hancock County, Maine, identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study - Hancock County, Maine," dated July 20, 2016 with accompanying "Flood Insurance Rate Map" dated July 20, 2016 with panels: 889D, 892D, 893D, 894D, 911D, 912D, 913D, 914D, 918D, 1102D, 1104D, 1106D, 1107D, 1108D, 1109D, 1112D, 1116D, 1117D, 1126D, 1127D, 1128D, 1129D, 1131D, 1133D, 1136D, and 1137D, derived from the county wide digital Flood Insurance Rate Map entitled "Digital Flood Insurance Rate Map, Hancock County, Maine," are hereby adopted by reference and declared to be a part of this Ordinance.

ARTICLE II - PERMIT REQUIRED

Before any construction or other development (as defined in Article XIV), including the placement of manufactured homes, begins within any areas of special flood hazard established in Article I, a Flood Hazard Development Permit shall be obtained from the Code Enforcement Officer except as provided in Article VII. This permit shall be in addition to any other permits which may be required pursuant to the codes and ordinances of the Town of Brooksville, Maine.

ARTICLE III - APPLICATION FOR PERMIT

The application for a Flood Hazard Development Permit shall be submitted to the Code Enforcement Officer and shall include:

- A. The name, address and phone number of the applicant, owner, and contractor;
- B. An address and a map indicating the location of the construction site;
- C. A site plan showing location of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions;
- D. A statement of the intended use of the structure and/or development;
- E. A statement of the cost of the development including all materials and labor;
- F. A statement as to the type of sewage system proposed;
- G. Specification of dimensions of the proposed structure and/or development;

[Items H-K.3. apply only to new construction and substantial improvements.]

- H. The elevation in relation to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD), or to a locally established datum in Zone A only, of the:
 - 1. base flood at the proposed site of all new or substantially improved structures, which is determined:
 - a. in Zones AE and VE from data contained in the "Flood Insurance Study - Hancock County, Maine," as described in Article I; or,
 - b. in Zone A:
 - (1) from any base flood elevation data from federal, state, or other technical sources (such as FEMA's Quick-2 model, FEMA 265), including information obtained pursuant to Article VI.K. and IX.D.;
 - (2) from the contour elevation extrapolated from a best fit analysis of the floodplain boundary when overlaid onto a USGS Quadrangle Map or other topographic map prepared by a Professional Land Surveyor or registered professional engineer, if the floodplain boundary has a significant correlation to the elevation contour line(s); or, in the absence of all other data,
 - (3) to be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building.
 - 2. highest and lowest grades at the site adjacent to the walls of the proposed building;
 - 3. lowest floor, including basement; and whether or not such structures contain a basement; and,

4. level, in the case of non-residential structures only, to which the structure will be floodproofed;
- I. A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in Article VI;
- J. A written certification by a Professional Land Surveyor, registered professional engineer or architect, that the base flood elevation and grade elevations shown on the application are accurate
- K. The following certifications as required in Article VI by a registered professional engineer or architect:
 1. a Floodproofing Certificate (FEMA Form 81-65, as amended), to verify that the floodproofing methods for any non-residential structures will meet the floodproofing criteria of Article III.H.4.; Article VI.G.; and other applicable standards in Article VI;
 2. a V-Zone Certificate to verify that the construction in coastal high hazard areas, Zone VE, will meet the criteria of Article VI.P.; and other applicable standards in Article VI;
 3. a Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Article VI.L.2.a.;
 4. a certified statement that bridges will meet the standards of Article VI.M.;
 5. a certified statement that containment walls will meet the standards of Article VI.N.;
- L. A description of the extent to which any water course will be altered or relocated as a result of the proposed development; and,
- M. A statement of construction plans describing in detail how each applicable development standard in Article VI will be met.

ARTICLE IV - APPLICATION FEE AND EXPERT'S FEE

A non-refundable application fee of \$25.00 for all minor development and \$ 50.00 for all new construction or substantial improvements shall be paid to the Town and a copy of a receipt for the same shall accompany the application.

An additional fee may be charged if the Code Enforcement Officer, Planning Board, and/or Board of Appeals needs the assistance of a professional engineer or other expert. The expert's fee shall be paid in full by the applicant within 10 days after the town submits a bill to the applicant. Failure to pay the bill shall constitute a violation of the ordinance and be grounds for the issuance of a stop work order. An expert shall not be hired by the municipality at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject. An applicant who

is dissatisfied with a decision to hire expert assistance may appeal that decision to the Board of Appeals.

ARTICLE V - REVIEW STANDARDS FOR FLOOD HAZARD DEVELOPMENT PERMIT APPLICATIONS

The Code Enforcement Officer shall:

- A. Review all applications for the Flood Hazard Development Permit to assure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of Article VI (Development Standards) have been, or will be met;
- B. Utilize, in the review of all Flood Hazard Development Permit applications:
 - 1. the base flood and floodway data contained in the "Flood Insurance Study - Hancock County, Maine," as described in Article I.;
 - 2. in special flood hazard areas where base flood elevation and floodway data are not provided, the Code Enforcement Officer shall obtain, review and reasonably utilize any base flood elevation and floodway data from federal, state, or other technical sources, including information obtained pursuant to Article III.H.1.b.; Article VI.K.; and Article IX.D., in order to administer Article VI of this Ordinance; and,
 - 3. when the community establishes a base flood elevation in a Zone A by methods outlined in Article III.H.1.b., the community shall submit that data to the Maine Floodplain Management Program.
- C. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in Article I of this Ordinance;
- D. In the review of Flood Hazard Development Permit applications, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1344;
- E. Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Floodplain Management Program prior to any alteration or relocation of a water course and submit copies of such notifications to the Federal Emergency Management Agency;
- F. If the application satisfies the requirements of this Ordinance, approve the issuance of one of the following Flood Hazard Development Permits, based on the type of development:

1. A two-part Flood Hazard Development Permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the Code Enforcement Officer with a Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer or architect based on the Part I permit construction, "as built", for verifying compliance with the elevation requirements of Article VI, paragraphs F, G, H, or P. Following review of the Elevation Certificate data, which shall take place within 72 hours of receipt of the application, the Code Enforcement Officer shall issue Part II of the Flood Hazard Development Permit. Part II shall authorize the applicant to complete the construction project; or,
2. A Flood Hazard Development Permit for Floodproofing of Non-Residential Structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the floodproofing standards of Article VI.G.1.a., b., and c. The application for this permit shall include a Floodproofing Certificate signed by a registered professional engineer or architect; or,
3. A Flood Hazard Development Permit for Minor Development for all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. Minor development also includes, but is not limited to: accessory structures as provided for in Article VI.J., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

For development that requires review and approval as a Conditional Use, as provided for in this Ordinance, the Flood Hazard Development Permit Application shall be acted upon by the Planning Board as required in Article VII.

- G. Maintain, as a permanent record, copies of all Flood Hazard Development Permit Applications, corresponding Permits issued, and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of Article X of this Ordinance, and copies of Elevation Certificates, Floodproofing Certificates, Certificates of Compliance and certifications of design standards required under the provisions of Articles III, VI, and VIII of this Ordinance.

ARTICLE VI - DEVELOPMENT STANDARDS

All developments in areas of special flood hazard shall meet the following applicable standards:

A. All Development - All development shall:

1. be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

2. use construction materials that are resistant to flood damage;
 3. use construction methods and practices that will minimize flood damage; and
 4. use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located to prevent water from entering or accumulating within the components during flooding conditions.
- B. **Water Supply** - All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
- C. **Sanitary Sewage Systems** - All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.
- D. **On Site Waste Disposal Systems** - On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.
- E. **Watercourse Carrying Capacity** - All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the watercourse.
- F. **Residential** - New construction or substantial improvement of any residential structure located within:
1. Zones AE shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.
 2. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B.; or Article IX.D.
 3. Zone VE shall meet the requirements of Article VI.P.
- G. **Non Residential** - New construction or substantial improvement of any non-residential structure located within:
1. Zones AE shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation, or together with attendant utility and sanitary facilities shall:
 - a. be floodproofed to at least one foot above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;

- b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
 - c. be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K. and shall include a record of the elevation above mean sea level to which the structure is floodproofed.
 - 2. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B.; or Article IX.D., or
 - a. together with attendant utility and sanitary facilities meet the floodproofing standards of Article VI.G.1.
 - 3. Zone VE shall meet the requirements of Article VI.P.
- H. Manufactured Homes** - New or substantially improved manufactured homes located within:
- 1. Zone AE shall:
 - a. be elevated such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation;
 - b. be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and,
 - c. be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:
 - (1) over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by,
 - (2) frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).
 - (3) all components of the anchoring system described in Article VI.H.1.c.(1) & (2) shall be capable of carrying a force of 4800 pounds.

2. Zone A shall:

- a. be elevated on a permanent foundation, as described in Article VI.H.1.b., such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B; or Article IX.D.; and
- b. meet the anchoring requirements of Article VI.H.1.c.

3. Zone VE shall meet the requirements of Article VI.P.

I. **Recreational Vehicles** - Recreational Vehicles located within:

1. Zones A and AE shall either:

- a. be on the site for fewer than 180 consecutive days,
- b. be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or,
- c. be permitted in accordance with the elevation and anchoring requirements for "manufactured homes" in Article VI.H.1.

2. Zone VE shall meet the requirements of either Article VI.I.1.a. and b., or Article VI.P.

J. **Accessory Structures** - Accessory Structures, as defined in Article XIV, located within Zones A and AE, shall be exempt from the elevation criteria required in Article VI.F. & G. above, if all other requirements of Article VI and all the following requirements are met. Accessory Structures shall:

1. have unfinished interiors and not be used for human habitation;
2. have hydraulic openings, as specified in Article VI.L.2., in at least two different walls of the accessory structure;
3. be located outside the floodway;
4. when possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and,
5. have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Special Flood Hazard Area.

K. Floodways -

1. In Zone AE riverine areas, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway which is designated on the community's Flood Insurance Rate Map unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
2. In Zones AE and A riverine areas, for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in the floodway as determined in Article VI.K.3. unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:
 - a. will not increase the water surface elevation of the base flood more than one foot at any point within the community; and,
 - b. is consistent with the technical criteria contained in FEMA's guidelines and standards for flood risk analysis and mapping.
3. In Zones AE and A riverine areas, for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.

L. Enclosed Areas Below the Lowest Floor - New construction or substantial improvement of any structure in Zones A and AE that meets the development standards of Article VI, including the elevation requirements of Article VI, paragraphs F, G, or H and is elevated on posts, columns, piers, piles, "stilts," or crawl spaces may be enclosed below the base flood elevation requirements provided all the following criteria are met or exceeded:

1. Enclosed areas are not "basements" as defined in Article XIV;
2. Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement must either:
 - a. be engineered and certified by a registered professional engineer or architect; or,
 - b. meet or exceed the following minimum criteria:
 - (1) a minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;

- (2) the bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade; and,
- (3) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means;

3. The enclosed area shall not be used for human habitation; and,

4. The enclosed areas are usable solely for building access, parking of vehicles, or storage.

M. Bridges - New construction or substantial improvement of any bridge in Zones A, AE, and VE shall be designed such that:

- 1. when possible, the lowest horizontal member (excluding the pilings, or columns) is elevated to at least one foot above the base flood elevation; and
- 2. a registered professional engineer shall certify that:
 - a. the structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of Article VI.K.; and
 - b. the foundation and superstructure attached thereto are designed to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.

N. Containment Walls - New construction or substantial improvement of any containment wall located within:

- 1. Zones A, AE, and VE shall:
 - a. have the containment wall elevated to at least one foot above the base flood elevation;
 - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
 - c. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K.

O. **Wharves, Piers and Docks** - New construction or substantial improvement of wharves, piers, and docks are permitted in Zones A, AE, and VE, in and over water and seaward of the mean high tide if the following requirements are met:

1. wharves, piers, and docks shall comply with all applicable local, state, and federal regulations; and
2. for commercial wharves, piers, and docks, a registered professional engineer shall develop or review the structural design, specifications, and plans for the construction.

P. **Coastal Floodplains** -

1. All new construction located within Zones AE and VE shall be located landward of the reach of mean high tide except as provided in Article VI.P.6.
2. New construction or substantial improvement of any structure located within Zone VE shall:
 - a. be elevated on posts or columns such that:
 - (1) the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to one foot above the base flood elevation;
 - (2) the pile or column foundation and the elevated portion of the structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components; and,
 - (3) water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state and local building standards.
 - b. have the space below the lowest floor:
 - (1) free of obstructions; or,
 - (2) constructed with open wood lattice-work, or insect screening intended to collapse under wind and water without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting piles or columns; or,
 - (3) constructed to enclose less than 300 square feet of area with non-supporting breakaway walls that have a design safe loading resistance of not less than 10 or more than 20 pounds per square foot.
 - c. require a registered professional engineer or architect to:

- (1) develop or review the structural design, specifications, and plans for the construction, which must meet or exceed the technical criteria contained in the *Coastal Construction Manual*, (FEMA-55); and,
 - (2) certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the criteria of Article VI.P.2.
3. The use of fill for structural support in Zone VE is prohibited.
4. Human alteration of sand dunes within Zone VE is prohibited unless it can be demonstrated that such alterations will not increase potential flood damage.
5. The area below the lowest floor shall be used solely for parking vehicles, building access, and storage.
6. Conditional Use - Lobster sheds and fishing sheds may be located seaward of mean high tide and shall be exempt from the elevation requirement in Article VI.G. only if permitted as a Conditional Use following review and approval by the Planning Board, as provided in Article VII, and if all the following requirements and those of Article VI.A., VI.K., and VI.L. are met:
 - a. The conditional use shall be limited to low value structures such as metal or wood sheds 200 square feet or less and shall not exceed more than one story.
 - b. The structure shall be securely anchored to the wharf or pier to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.
 - c. The structure will not adversely increase wave or debris impact forces affecting nearby buildings.
 - d. The structure shall have unfinished interiors and shall not be used for human habitation.
 - e. Any mechanical, utility equipment and fuel storage tanks must be anchored and either elevated or floodproofed to one foot above the base flood elevation.
 - f. All electrical outlets shall be ground fault interrupt type. The electrical service disconnect shall be located on shore above the base flood elevation and when possible outside the Special Flood Hazard Area.

ARTICLE VII - CONDITIONAL USE REVIEW

The Planning Board shall hear and decide upon applications for conditional uses provided for in this Ordinance. The Planning Board shall hear and approve, approve with conditions, or disapprove all applications for conditional uses. An applicant informed by the Code

Enforcement Officer that a Conditional Use Permit is required shall file an application for the permit with the Planning Board.

A. Review Procedure for a Conditional Use Flood Hazard Development Permit

1. The Flood Hazard Development Permit Application with additional information attached addressing how each of the conditional use criteria specified in the Ordinance will be satisfied, may serve as the permit application for the Conditional Use Permit.
2. Before deciding any application, the Planning Board shall hold a public hearing on the application within thirty days of their receipt of the application.
3. If the Planning Board finds that the application satisfies all relevant requirements of the ordinance, the Planning Board must approve the application or approve with conditions within 45 days of the date of the public hearing.
4. A Conditional Use Permit issued under the provisions of this Ordinance shall expire if the work or change involved is not commenced within 180 days of the issuance of the permit by the Planning Board.
5. The applicant shall be notified by the Planning Board in writing over the signature of the Chairman of the Planning Board that flood insurance is not available for structures located entirely over water or seaward of mean high tide.

B. Expansion of Conditional Uses

1. No existing building or use of premises may be expanded or enlarged without a permit issued under this section if that building or use was established or constructed under a previously issued Conditional Use Permit or if it is a building or use which would require a Conditional Use Permit if being newly-established or constructed under this Ordinance.

ARTICLE VIII - CERTIFICATE OF COMPLIANCE

No land in a special flood hazard area shall be occupied or used and no structure which is constructed or substantially improved shall be occupied until a Certificate of Compliance is issued by the Code Enforcement Officer subject to the following provisions:

A. For New Construction or Substantial Improvement of any elevated structure the applicant shall submit to the Code Enforcement Officer:

1. an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer, or architect, for compliance with Article VI, paragraphs F, G, H, or P and,

2. for structures in Zone VE, certification by a registered professional engineer or architect that the design and methods of construction used are in compliance with Article VI.P.2.
- B. The applicant shall submit written notification to the Code Enforcement Officer that the development is complete and complies with the provisions of this ordinance.
 - C. Within 10 working days, the Code Enforcement Officer shall:
 1. review the required certificate(s) and the applicant's written notification; and,
 2. upon determination that the development conforms to the provisions of this ordinance, shall issue a Certificate of Compliance.

ARTICLE IX - REVIEW OF SUBDIVISION AND DEVELOPMENT PROPOSALS

The Planning Board shall, when reviewing subdivisions and other proposed developments that require review under other federal law, state law, local ordinances or regulations, and all projects on 5 or more disturbed acres, or in the case of manufactured home parks divided into two or more lots, assure that:

- A. All such proposals are consistent with the need to minimize flood damage.
- B. All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.
- C. Adequate drainage is provided in order to reduce exposure to flood hazards.
- D. All proposals include base flood elevations, flood boundaries, and, in a riverine floodplain, floodway data. These determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency.
- E. Any proposed development plan must include a condition of plan approval requiring that structures on any lot in the development having any portion of its land within a Special Flood Hazard Area, are to be constructed in accordance with Article VI of this ordinance. Such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The condition shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the Planning Board or local reviewing authority as part of the approval process.

ARTICLE X - APPEALS AND VARIANCES

The Board of Appeals of the Town of Brooksville may, upon written application of an aggrieved party, hear and decide appeals where it is alleged that there is an error in any

order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the administration or enforcement of the provisions of this Ordinance.

The Board of Appeals may grant a variance from the requirements of this Ordinance consistent with state law and the following criteria:

- A. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- B. Variances shall be granted only upon:
 - 1. a showing of good and sufficient cause; and,
 - 2. a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and,
 - 3. a showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances; and,
 - 4. a determination that failure to grant the variance would result in "undue hardship," which in this sub-section means:
 - a. that the land in question cannot yield a reasonable return unless a variance is granted; and,
 - b. that the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and,
 - c. that the granting of a variance will not alter the essential character of the locality; and,
 - d. that the hardship is not the result of action taken by the applicant or a prior owner.
- C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as is deemed necessary.
- D. Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
 - 1. other criteria of Article X and Article VI.K. are met; and,
 - 2. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

E. Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of Historic Structures upon the determination that:

1. the development meets the criteria of Article X, paragraphs A. through D. above; and,
2. the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

F. Any applicant who meets the criteria of Article X, paragraphs A. through E. shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:

1. the issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;
2. such construction below the base flood level increases risks to life and property; and,
3. the applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.

G. Appeal Procedure for Administrative and Variance Appeals

1. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party within thirty days after receipt of a written decision of the Code Enforcement Officer or Planning Board.
2. Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
3. The Board of Appeals shall hold a public hearing on the appeal within thirty-five days of its receipt of an appeal request.
4. The person filing the appeal shall have the burden of proof.
5. The Board of Appeals shall decide all appeals within thirty-five days after the close of the hearing, and shall issue a written decision on all appeals.

6. The Board of Appeals shall submit to the Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.
7. Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five days from the date of any decision of the Board of Appeals.

ARTICLE XI - ENFORCEMENT AND PENALTIES

- A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance pursuant to Title 30-A MRSA § 4452.
- B. The penalties contained in Title 30-A MRSA § 4452 shall apply to any violation of this Ordinance.
- C. In addition to other actions, the Code Enforcement Officer may, upon identifying a violation, submit a declaration to the Administrator of the Federal Insurance Administration requesting a flood insurance denial. The valid declaration shall consist of;
 1. the name of the property owner and address or legal description of the property sufficient to confirm its identity or location;
 2. a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance;
 3. a clear statement that the public body making the declaration has authority to do so and a citation to that authority;
 4. evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and,
 5. a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

ARTICLE XII - VALIDITY AND SEVERABILITY

If any section or provision of this Ordinance is declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

ARTICLE XIII - CONFLICT WITH OTHER ORDINANCES

This Ordinance shall not in any way impair or remove the necessity of compliance with any other applicable rule, ordinance, regulation, bylaw, permit, or provision of law. Where this Ordinance imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this Ordinance shall control.

ARTICLE XIV - DEFINITIONS

Unless specifically defined below, words and phrases used in this Ordinance shall have the same meaning as they have at common law, and to give this Ordinance its most reasonable application. Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and not discretionary.

Accessory Structure - a small detached structure that is incidental and subordinate to the principal structure.

Adjacent Grade - the natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Area of Special Flood Hazard - land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in Article I of this Ordinance.

Base Flood - a flood having a one percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood.

Basement - area of a building that includes a floor that is subgrade (below ground level) on all sides.

Breakaway Wall - a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Building - see **Structure**.

Certificate of Compliance - a document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of this Ordinance.

Code Enforcement Officer - a person certified under Title 30-A MRSA, Section 4451 (including exceptions in Section 4451, paragraph 1) and employed by a municipality to enforce all applicable comprehensive planning and land use laws.

Conditional Use - a use that, because of its potential impact on surrounding areas and structures, is permitted only upon review and approval by the Planning Board pursuant to Article VII.

Containment Wall - wall used to convey or direct storm water or sanitary water from the initial source to the final destination.

Development - a manmade change to improved or unimproved real estate. This includes, but is not limited to, buildings or other structures; mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials; and the storage, deposition, or extraction of materials.

Digital Flood Insurance Rate Map (FIRM) – see Flood Insurance Rate Map

Elevated Building - a non-basement building that is:

- a. built, in the case of a building in Zones A or AE, so that the top of the elevated floor, or in the case of a building in Zone VE, to have the bottom of the lowest horizontal structural member of the elevated floor, elevated above the ground level by means of pilings, columns, post, piers, or "stilts;" and
- b. adequately anchored to not impair the structural integrity of the building during a flood of up to one foot above the magnitude of the base flood.

In the case of Zones A or AE, **Elevated Building** also includes a building elevated by means of fill or solid foundation perimeter walls with hydraulic openings sufficient to facilitate the unimpeded movement of flood waters, as required in Article VI.L. In the case of Zone VE, **Elevated Building** also includes a building otherwise meeting the definition of elevated building, even though the lower area is enclosed by means of breakaway walls, if the breakaway walls meet the standards of Article VI.P.2.b.(3).

Elevation Certificate - an official form (FEMA Form 81-31, as amended) that:

- a. is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program; and,
- b. is required for purchasing flood insurance.

Flood or Flooding

- a. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 1. The overflow of inland or tidal waters.
 2. The unusual and rapid accumulation or runoff of surface waters from any source.
- b. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph a.1. of this definition.

Flood Elevation Study - an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

Flood Insurance Rate Map (FIRM) - an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study - see **Flood Elevation Study**.

Floodplain or Floodprone Area - land area susceptible to being inundated by water from any source (see flooding).

Floodplain Management - means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

Floodplain Management Regulations - zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing - any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and contents.

Floodway - see **Regulatory Floodway**.

Floodway Encroachment Lines - the lines marking the limits of floodways on federal, state, and local floodplain maps.

Freeboard - a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed, which could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

Functionally Dependent Use - a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Historic Structure - means any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;

- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - 1. By an approved state program as determined by the Secretary of the Interior, or
 - 2. Directly by the Secretary of the Interior in states without approved programs.

Locally Established Datum - for purposes of this ordinance, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or any other established datum and is used in areas where Mean Sea Level data is too far from a specific site to be practically used.

Lowest Floor - the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements described in Article VI.L. of this Ordinance.

Manufactured Home - a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

Manufactured Home Park or Subdivision - a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean Sea Level - when related to the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

Minor Development - means all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. It also includes, but is not limited to: accessory structures as provided for in Article VI.J., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

National Geodetic Vertical Datum (NGVD) - the national vertical datum, a standard established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD is based upon mean sea level in 1929 and also has been called "1929 Mean Sea Level (MSL)".

New Construction - structures for which the "start of construction" commenced on or after the effective date of the initial floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

North American Vertical Datum (NAVD)- means the national datum whose standard was established in 1988, which is the new vertical datum used by the National Flood Insurance Program (NFIP) for all new Flood Insurance Rate Maps. NAVD is based upon vertical datum used by other North American countries such as Canada and Mexico and was established to replace NGVD because of constant movement of the earth's crust, glacial rebound, and subsidence and the increasing use of satellite technology.

100-year flood - see **Base Flood**.

Recreational Vehicle - a vehicle that is:

- a. built on a single chassis;
- b. 400 square feet or less when measured at the largest horizontal projection, not including slideouts;
- c. designed to be self-propelled or permanently towable by a motor vehicle; and
- d. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory Floodway -

- a. the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot, and
- b. when not designated on the community's Flood Insurance Rate Map, it is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.

Riverine - relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Special Flood Hazard Area - see **Area of Special Flood Hazard**.

Start of Construction - the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings,

such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, or modification of any construction element, whether or not that alteration affects the external dimensions of the building.

Structure - means, for floodplain management purposes, a walled and roofed building. A gas or liquid storage tank that is principally above ground is also a structure.

Substantial Damage - means, damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement - means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- b. Any alteration of a Historic Structure, provided that the alteration will not preclude the structure's continued designation as a historic structure, and a variance is obtained from the Board of Appeals.

Variance - means a grant of relief by a community from the terms of a floodplain management regulation.

Violation - means the failure of a structure or development to comply with a community's floodplain management regulations.

ARTICLE XV - ABROGATION

This ordinance repeals and replaces any municipal ordinance previously enacted to comply with the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).

HARBOR ORDINANCE

TOWN OF BROOKSVILLE, MAINE

ENACTED: March 5, 2018
Date

CERTIFIED BY: [Signature]
Signature

CERTIFIED BY: Amber Bakeman
Print Name
Town Clerk
Title

Affix Seal



HARBOR ORDINANCE

TOWN OF BROOKSVILLE, MAINE MARCH 5, 2018

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Section 1: PURPOSE

1.1 This Town of Brooksville Harbor Ordinance is hereby established pursuant to 30-A MRSA sec. 3001 and 38 MRSA sec. 7 to regulate marine activities in Brooksville, including the Bagaduce River and all tidal bays and inlets adjacent to shorelines of the Town, and to manage the Town Landings. It is intended to ensure safety to persons and property, to promote availability and use of public resources, to encourage and protect traditional maritime and commercial activities, and to create a fair and efficient framework for the administration of those resources.

1.2 This Ordinance shall be subordinate to existing Federal and State Laws governing the same matters. Where found to be in conflict with higher Federal or State authority that portion of the Ordinance would be null and void; otherwise the Ordinance will stay in full force.

Section 2: WATERS REGULATED

2.1 Buck's Harbor, defined as the area north of a tangent line (295 degrees true) drawn from the white mark on Gray's Point to Condon's Point. (See NOAA chart #13309, US East Coast/Maine/Penobscot River and see Appendix I or this Ordinance.)

2.2 Smith Cove, defined as the area south and northeasterly of a line from the NW corner of Nautilus Island extending 310 degrees true in a northwesterly direction toward Can #1, thence northeasterly along the center line of the Bagaduce River to the center of Middle Ground Shoal, and thence 090 degrees true in an easterly direction to Stubb Point, being the first point north of Henry Point. (See NOAA chart #13309, US East Coast/Maine/Penobscot River and see Appendix II of this Ordinance.)

2.3 All other tidal waters within the jurisdictional limits of the Town of Brooksville.

Section 3: EFFECTIVE DATE

This Ordinance and any subsequent amendment shall take effect and be in force from the date of its adoption by the Town and all previous Harbor Ordinances are hereby repealed.

Section 4: VALIDITY AND SEVERABILITY

Should any section or part of a section or any provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such declaration shall not affect the validity of this Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

Section 5: HARBOR COMMITTEE

5.1 The Town of Brooksville Harbor Committee (henceforth referred to as the Committee) is hereby established. It shall consist of seven (7) voting members appointed by the Selectmen. Five (5) members shall constitute a quorum. One Selectman and the Harbor-master shall serve as non-voting advisors to the Committee.

5.2 The Committee members shall all be residents of the Town of Brooksville. The membership shall represent diverse interests in the harbors, waterways, and tidal waters including, but not limited to, commercial and recreational boat owners, shoreland owners, water-related business owners, and Town board or committee members.

5.3 The term of a member shall be three (3) years, with members appointed on a cycle of two (2) members, two (2) members and three (3) members per year. The term shall commence immediately following the Annual Town Meeting. In the event of a vacancy in an unexpired term, a replacement member shall serve for the remainder of such unexpired term, commencing upon appointment by the Selectmen.

5.4 The Chairperson of the Committee shall be elected annually by a vote of the Committee at its first meeting following the Annual Town Meeting or at such time as a vacancy shall occur during the year.

5.5 The Chairperson of the Committee shall call a meeting of the Committee at the request of the Harbormaster or any two or more Committee members. The Selectmen may call a meeting of the Harbor Committee at their discretion. Meetings shall be held at least quarterly. Notice shall be given to members at least 10 (ten) days prior to meetings. Notice of all meetings shall be posted at the Town Public Service Building at least 10 days in advance, and meetings shall be open to the public.

5.6 The duties of the Committee shall be:

5.6.1 To present to the Selectmen qualified candidate(s) for appointment as Harbormaster by February 1 of each year. The Committee shall use Section 6 of this Ordinance when considering qualifications of candidates. If the Selectmen do not deem any candidate satisfactory, then the Committee will use its best efforts to present additional qualified applicants.

5.6.2 To oversee the duties of the Harbormaster and to provide to the Selectmen an evaluation of the Harbormaster's performance by December 31 of each year.

5.6.3 To conduct harbor and coastal planning, operation and regulation, limited to those waters of Brooksville described in Section 2 of this Ordinance, except for duties of the Harbormaster or assistants which are set forth in 38 MRSA sec.1 et seq. of this Ordinance.

5.6.4 To recommend changes as needed in Appendices to the Selectmen for their approval and subsequent modification.

5.6.5 To make recommendations to any Town meeting or duly constituted Town body or to any regulatory or advisory body as may be consistent with its duties.

5.6.6 To develop an annual budget for activities covered by this Ordinance and to recommend fees (Appendix III) and fines and penalties (Appendix IV) associated therewith to the Selectmen for their approval and subsequent modification.

5.6.7 To hear appeals of any person aggrieved by any decision, act, or failure to act of the Harbormaster or assistants.

5.6.8 To recommend changes to this Ordinance as needed to the Selectmen.

5.6.9 To oversee the management of the Town Landings.

Section 6: HARBORMASTER

6.1 Within the waters of Brooksville, the Harbormaster shall have all those certain duties and responsibilities of that office which are prescribed by 38 MRSA sec.1 et seq., including resolving conflicts between parties relating to moorings and watercraft operations.

6.2 The Harbormaster shall be appointed by the Selectmen annually for a one-year term beginning March 1 and ending February 28. In the event that an appointment is not made by February 28, the incumbent shall remain in office until a successor is appointed and sworn. This Ordinance shall not be construed as giving the serving Harbormaster any expectation of automatic reappointment to successive terms, and no cause need be shown by the Selectmen for their failure to reappoint a Harbormaster at the end of any one-year term.

6.3 The Selectmen shall appoint a Harbormaster from the nominees submitted by the Harbor Committee. The Selectmen may reappoint the Harbormaster after reviewing evaluations of the Committee. The Harbormaster may, if necessary, from time to time appoint and delegate to an Assistant Harbormaster certain duties and responsibilities, subject to the approval of the Harbor Committee.

6.4 A Harbormaster may be removed from office, or be subject to other disciplinary action, by the Selectmen upon recommendation of the Harbor Committee during his/her term of office for cause under 30A MRSA sec. 2601, and 38 MRSA sec.1. Any such recommendation shall be preceded by a predetermination hearing before the Committee after notice to the Harbormaster and in executive session, unless otherwise requested by the Harbormaster. If the Committee then decides to recommend removal or other discipline, it shall provide the Selectmen and the Harbormaster with a written list of specified charges pursuant to 1 MRSA sec. 405(6)(A) and 38 MRSA sec.1. The Selectmen shall then conduct a hearing on those charges and provide a written decision within 30 days. Any vacancy in the Harbormaster's position shall be filled by the procedures set forth in Section 5.6.1 of this Ordinance. Until a successor is appointed to fill out the term left vacant, the chairperson of the Harbor Committee shall serve as Acting Harbormaster.

6.5 Upon recommendation of the Harbor Committee, the Selectmen shall establish compensation of the Harbormaster.

6.6 Minimum qualifications of the Harbormaster are as follows:

- 6.6.1 Ability to work independently with sound judgment and excellent communication skills.
- 6.6.2 Strong organizational skills with an attention to details.
- 6.6.3 Proficiency in computer use, including Microsoft Office software.
- 6.6.4 Ability to interact with a wide variety of entities and individuals at the local, state and federal levels.
- 6.6.5 Proficiency in small boat handling and basic navigation.
- 6.6.6 Available to work variable hours, including weekends, during boating season.
- 6.6.7 Maine Harbormaster Certification. If not certified, certification must be obtained at the next available course.

6.7 Duties and responsibilities of the Harbormaster include, but are not limited to, the following:

6.7.1 Administer and enforce the provisions of this Ordinance with the authority granted bylaw.

6.7.2 Manage and administer the annual mooring and dinghy tie-up renewal process, maintain the Buck's Harbor mooring waiting list and the approved mooring inspectors list, register new moorings in waters outside Buck's Harbor, and assign and issue permits for new mooring locations in Buck's Harbor.

6.7.3 Maintain anchorage areas and change mooring locations when a crowded condition renders the change desirable.

6.7.4 Aid the Harbor Committee in the preparation of its annual report and budget.

6.7.5 Resolve conflicts between parties relating to moorings and operation of watercraft.

6.7.6 Ensure that users of the Town Landings and adjacent parking areas comply with the rules for each Landing, including payment of the current dinghy/kayak fee and display of a current registration decal.

6.7.7 Coordinate the Spring installation and Fall removal of Town Landing floats and advise the Harbor Committee of any needed new and/or maintenance required for the floats and sites.

6.7.8 The Harbormaster is not authorized to carry a weapon or to make arrests in the conduct of any duties required by his/her office.

SECTION 7: GENERAL REGULATIONS

7.1 Mooring placement. Setting a mooring in designated channels or anchorage areas is prohibited.

7.2 Removal of Vessels or Obstructions in Channels. No person shall place any watercraft or floating device in designated channels, except in case of emergency and when such anchoring will not create an emergency for other vessels or substantially obstruct the channel. The Harbormaster may, in the interests of safety and clear navigation of said channel, move (or cause to be moved) such an object at the cost of the owner.

7.3 Discharge of Waste and Pollutants. No person shall discharge, or allow the discharge of, sewage, effluent, pollutants, hazardous material, garbage, trash, or refuse of any kind, by any method, means, or manner from any watercraft into or upon the waters of Brooksville.

7.4 Commercial Fishing

7.4.1 There shall be no dragging for shellfish or unauthorized setting of nets within 75' of any residential or non-commercial pier or within 300' of any commercial pier or marine railway in Brooksville waters.

7.4.2 There shall be no dragging for shellfish or unauthorized setting of nets within the territory defined as Buck's Harbor.

7.4.3 There shall be no setting of fishing gear in the marked channels of Buck's Harbor.

7.4.4 No watercraft, floating device, mooring, or fixed fishing gear may be placed in the designated channel or anchorage areas in Smith Cove.

7.5 Speed Restrictions

7.5.1 No person shall use or operate any vessel in such a way as to cause danger, damage to or loss of property, or annoyance to other users of Brooksville waters.

7.5.2 Any person operating a watercraft recklessly, at a speed greater than is reasonable and proper having regard to other traffic, moored vessels, and proximity to shore, or while intoxicated or under the influence of any narcotic drug, shall be guilty of a Class E Crime.

7.5.3 North of the red and green buoys (geodetic coordinate 44.20.050N) in Buck's Harbor all vessels shall be operated in a manner so as to cause minimal wake, while maintaining safe headway, and at a speed not to exceed 5 mph.

7.6 Anchoring

7.6.1 Anchoring a vessel within a designated channel or mooring area is prohibited.

7.6.2 No vessel shall be left unattended at anchor in Buck's Harbor for more than 4 (four) hours.

7.7 Liability Relating to Moorings

7.7.1 The mooring owner has the responsibility to install (or cause to be installed) the mooring system in a manner suitable to the size, configuration, and displacement of his/her watercraft according to commonly accepted marine practice.

7.7.2 The mooring owner has the responsibility to maintain his/her mooring in a safe condition. Holding a mooring permit or registration does not absolve the holder from liability or damages resulting from failure of his/her mooring.

7.8 Abandonment of Watercraft

7.8.1 No person shall cause to be abandoned any watercraft, floating device, cradle, or any other obstruction on the shore or afloat within Brooksville waters. Any such object which has been left unattended at anchor or moored without authorization of the Harbormaster for a period of fourteen (14) days shall be deemed to be abandoned and, in accordance with 38 MRSA sec. 9, such abandonment constitutes a Class E crime.

7.8.2 The Harbormaster shall order the owner of such abandoned watercraft, floating device, cradle or other obstruction, if such owner is known, to remove it within ten (10) days. Upon the owner's refusal to do so, or if the owner cannot be identified, the Harbormaster may cause its removal, with costs paid by the Town but with reimbursement due from the owner when identified.

7.9 Removal of Moorings. The Harbormaster may remove or cause a mooring to be removed for the following reasons:

7.9.1 Non-payment of mooring permit and/or registration fees or lack of mooring inspection in Buck's Harbor within the prescribed period.

7.9.2 Neglect to remove or replace moorings. In the case of the neglect or the refusal of the mooring owner to remove a mooring, to modify a mooring, or to replace a mooring with one of different character, when so directed by the Harbormaster, the Harbormaster may cause the mooring to be removed from service or from the Harbor.

7.9.3 Any removal shall be at the expense of the mooring owner and in accordance with MSRA 38 sec.4.

Section 8: MOORING PERMITS (for Buck's Harbor)

8.1 No mooring shall be placed unless: (1) an application for permit has been filed with the Harbormaster; (2) the Harbormaster has issued a written permit specifying the mooring's location, size, type and scope, and the maximum size and type of boat to be moored; and (3) the appropriate fee has been paid.

8.2 Categories of Permits

- 8.2.1 Shoreland owners (primary, guest, float, outhaul)
- 8.2.2 Boat owners (resident, commercial fishermen, non-resident)
- 8.2.3 Commercial rental mooring owners
- 8.2.4 Service moorings
- 8.2.5 Other (storm, float, temporary)
- 8.2.6 Town moorings

8.3 Applications

8.3.1 Application forms for new permits may be obtained from the Harbormaster or at the Town Office.

8.3.2 A permit application must be supported by a statement of its use: primary mooring for a specific watercraft owned by the applicant, shoreland owner's mooring, guest mooring, service mooring, commercial rental mooring.

8.3.3 Any permit application shall be acted upon by the Harbormaster within two weeks.

8.3.4 Any permit application which is denied shall state the reason(s) on the rejection notice. The applicant shall have 30 days in which to file an appeal with the Harbor Committee. The Harbor Committee shall consider the appeal and render its findings within 30days.

8.3.5 Moorings and anchors used solely to secure floats, walkways, and/or outhauls attached to the shore require a permit but need not be subject to a fee. In the case of shoreland owners, these do not count as primary or guest moorings.

8.3.6 Those moorings for which any type of fee is charged, including moorings offered for transient or seasonal rental by a commercial maritime business, and those moorings used in the course of a commercial maritime business (including service

moorings), must have a US Army Corps of Engineers permit in addition to a mooring permit or registration from the Town of Brooksville.

8.3.7 Any mooring intended for use as a guest mooring by a yacht club, cruising club, or other permit holder or applicant must have that use stated in the permit application.

8.3.8 Temporary mooring permits may be issued by the Harbormaster for service craft requiring by operational necessity immediate access to a specific location.

8.3.9 Fees for mooring permits shall be set annually by the Selectmen with the advice of the Harbor Committee and included in Appendix III of this Ordinance.

8.4 Renewals

8.4.1 Renewals of permits shall be granted if there is no substantial change in the content of the application (such as size of watercraft).

8.4.2 A mooring owner with a permit valid during the previous year and currently owning no boat is allowed, as a matter of right, an extension of one year on that permit. After the initial one-year extension, the Harbormaster may grant additional extensions from year to year if there is no qualified party on the waiting list for this description of mooring location or if there are extenuating circumstances.

8.5 Issuance of Permits

8.5.1 When the number of applications exceeds the number of spaces available, the Harbormaster shall establish a waiting list by priority as follows:

- (1) Shoreland owner
- (2) Resident commercial fisherman
- (3) Existing mooring owner requesting change of mooring location
- (4) Resident recreational and commercial (service, rental, charter, etc.)
- (5) Non-resident recreational and commercial (fishermen, service, rental, charter, etc.)

8.5.2 Generally, an applicant's name may appear only once on the waiting list. Multiple applications under a single name shall be subject to review by the Harbor Committee. An application for a single commercial rental mooring must be supported by evidence of a bona fide commercial venture.

8.5.3 A record of all applications showing date of receipt shall be promptly forwarded to the Harbor Committee.

8.6 Waiting List Preferences

8.6.1 Shoreland owners receive a primary mooring as a matter of right. They shall be given the first vacancy on the waiting list. Mooring placement will be determined by the Harbormaster. Where possible, it will be at the shoreland owner's property.

8.6.2 A shoreland owner using his/her primary mooring for his/her own watercraft shall have the right to one guest mooring at the applicable fee. Mooring placement will be determined by the Harbormaster. Where possible, it will be at the shoreland owner's property.

8.6.3 Resident commercial fishermen shall receive the first space available after shoreland owners.

8.6.4 If less than 10% of currently assigned moorings are non-resident, then the next available assignment shall be made to a non-resident.

8.6.5 Permits for new guest moorings other than those provided by a yacht club in Buck's Harbor or a shoreland owner will be issued only when there is no suitable permit applicant on the waiting list(s).

8.7 Transfer of Permits. Mooring permits and location assignments are not transferable, except:

8.7.1 Resident commercial fishermen may transfer a permit to a member of his/her immediate family if the permitted use continues for commercial fishing purposes.

8.7.2 The owner of commercial rental moorings and service moorings may transfer all of his/her/its permits to the purchaser of assets of his/her/its business as long as the business continues to operate the moorings in the same manner and under USACE permits.

8.7.3 Among other resident permit holders, a request for transfer of a permit to an immediate family member, also a resident, shall be considered to be an application for permit. Within the discretion of the Harbormaster, preference may be given above other resident recreational permit applications with respect to that specific permit location.

8.7.4 A permit holder no longer qualifying for, or desiring not to renew, his/her permit shall so inform the Harbormaster. The Harbormaster shall then offer that assigned location to the next qualified and suitable applicant on the waiting list. Ground tackle placed at the assigned location may be offered for sale and, if bought by the new permit holder, may be left in place. Otherwise, its owner must remove all ground tackle.

8.8 Placement of Moorings

8.8.1 Moorings shall be placed in the location indicated in the permit.

8.8.2 The Harbormaster shall provide the permit holder with latitude/longitude coordinates of his/her mooring and with the permit number.

8.8.3 The permit holder shall provide the Harbormaster with the name of the individual or company responsible for the inspection and maintenance of the mooring.

8.9 Use of Moorings. No one shall use a mooring without the express permission of the permit holder and subject to review by the Harbormaster for the safety and fitness of the mooring for the vessel. No permit holder shall sublet his/her mooring or mooring space to another user or boat owner without written permission of the Harbormaster.

8.10 Mooring Identification

8.10.1. The permit holder shall mark the mooring surface float or buoy with the permit number in 3" minimum height in a contrasting color and with his/her name or the watercraft's name in a manner that is legible at all times.

8.10.2 Any winter pole or similar device shall be marked with the permit number in a manner that is visible on the surface.

8.11 Mooring Inspections

8.11.1 New moorings shall be inspected by the Harbormaster, or an individual approved by the Harbormaster, before the mooring is set.

8.11.2 All moorings shall be inspected* annually by an inspector approved by the Harbormaster in order to retain a mooring permit. Those individuals or businesses approved by the Harbormaster to perform mooring inspections shall keep records of their inspection work.

8.12 Movement of Moorings

8.12.1 Movement of a permitted mooring from its assigned location is prohibited without the approval of the Harbormaster.

8.12.2 The Harbormaster may, for the safety of watercraft, the efficiency of a mooring area, the maintenance of a designated channel, the implementation of harbor management improvements, and/or the implementation of a Harbor Plan approved by the Harbor Committee, direct that a mooring site be vacated and the permit holder's ground tackle be moved to a new location within Buck's Harbor. With the exception of a timely movement of a mooring for safety or clear navigation purposes, any movement shall provide for ten (10) days' notice to the permit holder (by mail or personally by voice) and be accomplished with the least disruption to the permit holder. The cost of any such moves will be borne by the Town of Brooksville.

Section 9: MOORING REGISTRATION (for non-Buck's Harbor waters)

9.1 The owners of all new and existing moorings shall register the location annually with the Harbormaster. Registration forms may be obtained from the Harbormaster or at the Town Public Service Building.

9.1.1 Exception: For moorings in all Brooksville tidal waters related to aquaculture, see Section 11 of this Ordinance.

9.2 Registration fees shall be set annually by the Selectmen and included in Appendix III of this Ordinance. Shoreland owners pay no registration fee for an outhaul or for a shoreland float.

9.3 The registration holder shall mark the mooring surface float or buoy with the registration number in 3" minimum height in a contrasting color and shall mark any winter pole or similar device with the registration number in 3" minimum height in a contrasting color that is visible on the surface.

9.4 Any new mooring for which fees have not been paid within 30 days of its setting and any existing mooring for which fees have not been paid annually by May 1 may be removed by the Harbormaster or his/her agent.

*What constitutes inspection shall be in the judgment of the inspector and be subject to review by the Harbormaster.

Section 10: PIERS, DOCKS AND OTHER MARINE-RELATED STRUCTURES

Piers, docks and other marine-related structures are governed by Brooksville's Shoreland Environmental Protection Ordinance dated December 6, 2016.

Section 11: AQUACULTURE

11.1 Moorings within Brooksville tidal waters related to aquaculture projects requiring a permit from any state or federal authority also require a permit from the Town of Brooksville.

11.2 Moorings connected to any aquaculture project requiring a permit from State or Federal authority may be subject to review with special consideration to the economic, scenic, ecological, recreational, and commercial fishing effects of the project.

Section 12: TOWN LANDINGS

12.1 The Town currently has three (3) Town Landings managed by the Harbor Committee and available for use by residents and non-residents:

1. Bagaduce Falls on Bridge Rd/Route 176 in North Brooksville,
2. Betsy's Cove in the NW corner of Buck's Harbor on Coastal Rd in South Brooksville,
3. Dodge's Point in Smith Cove on Town Landing Rd in West Brooksville,

and may manage other landings the Town may have or acquire in the future.

12.2 The Fees, Fines and Rules for each Landing are in Appendices III, IV and V.

Section 13: VIOLATIONS, ENFORCEMENT AND FINES

13.1 No person shall maintain or use a mooring of any type within the tidal waters of Brooksville or keep a dinghy or kayak at a Town Landing without first having obtained a permit or registration from the Harbormaster.

13.2 The Harbormaster, upon finding that any provision of this Ordinance or the condition(s) of a permit issued under this Ordinance is being violated, is authorized to issue notices of violations, orders to correct, or schedules to correct and to initiate legal proceedings as authorized by the Selectmen to enjoin violations and to recover fines and costs.

13.3 A person who violates the provisions of this Ordinance or the condition(s) of a permit or registration shall be guilty of a civil violation. The Harbormaster shall serve the violator with a citation stating (1) the date and place of the offense; (2) the nature of the offense and the Ordinance provision violated; and (3) the civil penalty assessed. Civil penalties will begin to take effect after the Harbormaster has declared that the schedule to correct a violation(s) has not been met. In the event that the violator fails to pay the fine assessed by the Harbormaster, pursuant to the Selectmen's schedule, the Town shall commence an enforcement action in the Maine District Court, pursuant to 30-A MRSA sec. 4452 and MRCivP.80K. The Town shall also collect from the violator attorney's fees, expert witness fees, and costs. Upon recommendation of the Harbor Committee, the Selectmen may enter into administrative consent agreements.

13.4 The Selectmen shall establish a schedule of civil penalties for specific violations of this Ordinance consistent with 30-A MRSA sec. 4452(3) and from recommendations of the Harbor Committee. The Selectmen shall annually review the schedule of civil penalties and may amend them after consulting with the Harbor Committee.

13.5 Written decisions made by the Harbormaster may be appealed to the Harbor Committee within 30 days of his/her decision. Decisions of the Harbor Committee may be appealed directly to the Superior Court pursuant to MRCivP80B.

Section 14: REVENUES

Revenues generated by fees and civil penalties under this Ordinance which are in excess of actual annual expenditures for the execution and enforcement of this Ordinance shall be placed in a continuing account to be carried forward for future expenditures under this Ordinance or used to acquire, maintain and/or improve shore access to all waters of Brooksville.

Section 15: DEFINITIONS

Abandoned watercraft: Any watercraft that the Harbor Committee or Harbormaster determines to be a threat to navigation, property, other watercraft, or the environment due to watercraft condition or to neglect on the part of the owner(s) or master of the watercraft in question.

Aquaculture: Commercial or scientific marine farming for finfish, shellfish, other marine life and/or plants, using pens, nets, floats, stakes and/or other equipment.

Commercial Vessel: A vessel defined as a commercial vessel under the State of Maine Watercraft Excise Tax. Any vessel used for or engaged in any type of commercial activity including, but not limited to, commercial fishing or the carrying of cargo and/or passengers for hire.

Dock: A structure extending alongshore or out from the shore into a body of water to which vessels may be attached.

Emergency: A state of imminent or proximate danger to life, property, or the environment.

Float: Any floating structure connected to the shore normally used as a point of transfer for passengers or goods, or for temporary or continuous attachment by a vessel.

Mooring: A device to which a vessel or other watercraft is attached, that is not carried aboard, and whose sinker is left in place.

Obstruction: A mooring, vessel, float or other object, which impedes navigation.

Outhaul: Any mooring used to attach dinghies or tenders by means of a continuous line secured to the shore.

Permit: The official written authorization for placement of a mooring within Buck's Harbor or the official written authorization for placement of a mooring related to an aquaculture project in all tidal waters of Brooksville.

Pier (Wharf): A structure built on posts extending from land out over the water.

Registration: The official written recording of the placement of a mooring outside the bounds of Buck's Harbor, but within the tidal waters of Brooksville.

Resident: For the purposes of this Ordinance, a resident shall mean an individual who occupied a dwelling within the Town for 180 or more days in a calendar year, a real estate taxpayer and/or a registered voter in the Town of Brooksville as of January 1 of that year.

Shall and May: "Shall" is mandatory; "may" is permissive.

Service Mooring: Any mooring used as a service mooring or commercial mooring and assigned to a water-dependent business.

Shoreland Owner: An owner of a parcel of land greater than 20,000 square feet with at least 100 feet of shore frontage upon any of the tidal waters of the Town of Brooksville. Condominiums, townhouses, or any other similar multiple ownership parcels of land are considered as one parcel for purposes of allocating mooring permits and as such are entitled to one mooring under 38 MRSA sec. 3. Additional moorings may be allowed under other provisions of 38MRSA.

Vessel: Any watercraft used or capable of being used for transportation.

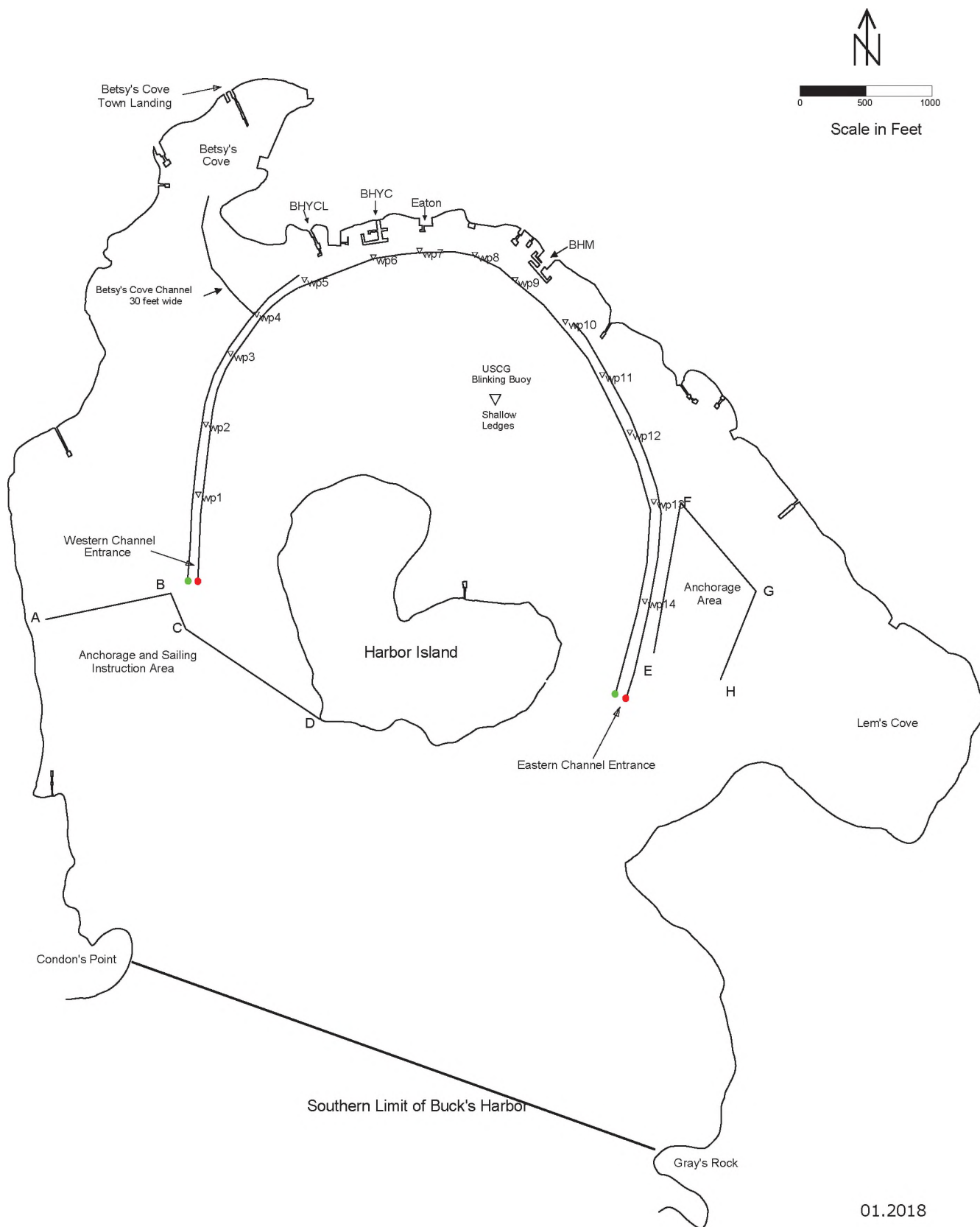
Watercraft: Any and all floating apparatus including, but not limited to, vessels, dinghies, skiffs, boats, rafts, floats, airplanes, lobster crates, aquaculture equipment, without distinction as to method of propulsion.

Water-dependent Business: Any business that the Harbor Committee determines to require the use of moorings in order to conduct its business.

Wharf: Any permanent non-floating structure normally used as a point of transfer for passengers and/or goods or for temporary or continuous attachment by a vessel.

APPENDIX I

BUCK'S HARBOR CHANNEL AND ANCHORAGE AREAS



01.2018

Buck's Harbor Channel and Anchorage Areas – p. 2

The Channel runs through the Harbor with a spur to the Town Landing in Betsy's Cove. The entrances on the west and east sides of Harbor Island are marked with red and green buoys. White buoys marked with "No Wake, 5 mph" define the Channel on both sides.

The east and west side channels are each 75' wide; the northern shore channel varies in width from 85' to 130'. The spur Channel into Betsy's Cove is 30' wide.

The midpoint of the west Channel entrance and mid-waypoints spaced at about 400' along that Channel are:

44° 20.131' N, 68° 44.573' W (entrance)
44° 20.201' N, 68° 44.565' W (wp 1)
44° 20.254' N, 68° 44.557' W (wp 2)
44° 20.308' N, 68° 44.529' W (wp 3)
44° 20.338' N, 68° 44.499' W (wp 4; channel entrance to Betsy's Cove)

The midpoint of the east Channel entrance and mid-waypoints spaced at about 400' along that Channel are:

44° 20.208' N, 68° 44.085' W (entrance)
44° 20.121' N, 68° 44.057' W (wp 14)
44° 20.197' N, 68° 44.047' W (wp 13)
44° 20.249' N, 68° 44.074' W (wp 12)
44° 20.283' N, 68° 44.106' W (wp 11)
44° 20.333' N, 68° 44.184' W (wp 10)

Along the northern shore from the Buck's Harbor Yacht Club Landing to Buck's Harbor Marina, southern boundary points and the approximate width of the Channel from west to east as measured between the face of shore docks/boat moorings and the sterns of moored boats/floats at low tide in a southerly wind are:

44° 20.369' N, 68° 44.387' W (wp 5 at BHYC Landing; 120')
44° 20.380' N, 68° 44.330' W (wp 6 at BHYC; 85')
44° 20.387' N, 68° 44.281' W (wp 7 at Eaton dock; 100')
44° 20.375' N, 68° 44.216' W (wp 8 at mooring B058; 120')
44° 20.354' N, 68° 44.171' W (wp 9 at BHM; 130')

The anchorage area east of Harbor Island is marked on the Harbor Chart as EFGH and is open to the south.

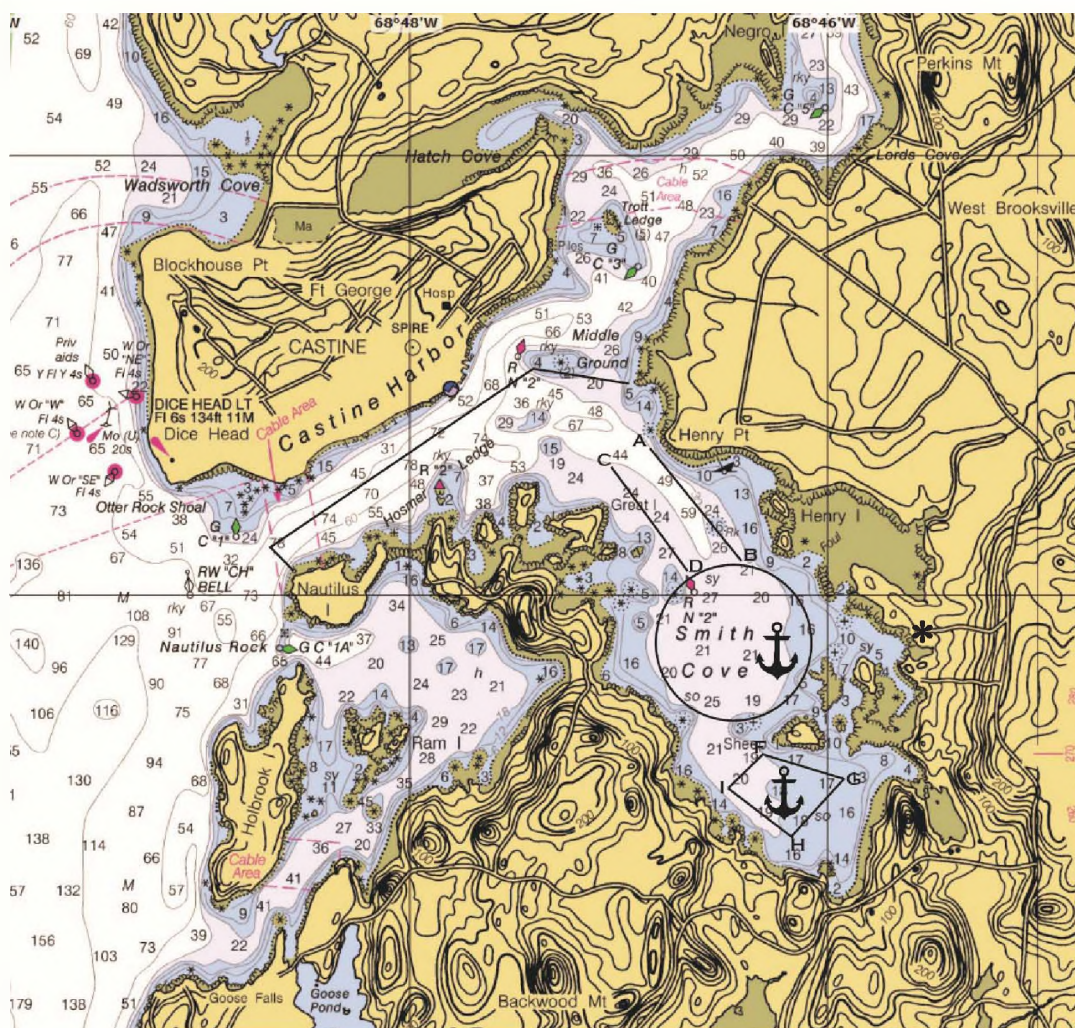
The anchorage and sailing instruction area west of Harbor Island lies south of the line marked ABCD on the Harbor Chart.

APPENDIX II

SMITH COVE CHANNEL AND ANCHORAGE AREAS

The 1,000' wide channel into Smith Cove is between the lines drawn from Point A at $44^{\circ}22.95'N/068^{\circ}46.75'W$ connected to point B at $44^{\circ}22.65'N/068^{\circ}46.41'W$ and point C at $44^{\circ}22.83'N/068^{\circ}46.95'W$ connected to point D at $44^{\circ}22.55'N/068^{\circ}46.60'W$.

The two anchorage areas are: (1) The area within a circle of $\frac{1}{4}$ NM radius around point $44^{\circ}22.30'N/068^{\circ}45.50'W$, and (2) The area made by connecting the following four points in order from F to I and then back to F: Point F at $44^{\circ}21.97'N/068^{\circ}46.30'W$, Point G at $44^{\circ}21.89'N/068^{\circ}46.00'W$, Point H at $44^{\circ}21.70'N/068^{\circ}46.15'W$, Point I at $44^{\circ}21.86'N/068^{\circ}46.45'W$.



*Dodge's Point Town Landing

APPENDIX III

MOORING PERMIT AND REGISTRATION FEES 2018

Buck's Harbor:

SF or SO: Shoreland owner float or outhaul attached to the shore	No fee
SP: Shoreland owner primary mooring	\$ 35.00
SNP: Shoreland owner non-primary/guest mooring	\$ 35.00
RR: Resident recreational	\$ 35.00
RCF or RCO: Resident commercial fisherman or other	\$ 35.00
NRR: Non-resident recreational	\$175.00
NRC: Non-resident commercial	\$175.00

Smith Cove:

SF or SO: Shoreland owner float or outhaul attached to the shore	No fee
SP: Shoreland owner primary mooring	\$ 20.00
SNP: Shoreland owner non-primary/guest mooring	\$ 20.00
RR: Resident recreational	\$ 20.00
RCF or RCO: Resident commercial fisherman or other	\$ 20.00
NRR: Non-resident recreational	\$100.00
NRC: Non-resident commercial	\$100.00

Other Waters

SF or SO: Shoreland owner float or outhaul attached to the shore	No fee
SP: Shoreland owner primary mooring	\$15.00
SNP: Shoreland owner non-primary/guest mooring	\$15.00
RR: Resident recreational	\$15.00
RCF or RCO: Resident commercial fisherman or other	\$15.00
NRR: Non-resident recreational	\$75.00
NRC: Non-resident commercial	\$75.00

DINGHY TIE-UP/KAYAK STORAGE REGISTRATION FEES

Bagaduce Falls Town Landing

RR: Resident	\$ 30.00
NR: Non-Resident	\$ 60.00

Betsy's Cove Town Landing

RR: Resident	\$ 30.00
NR: Non-Resident	\$275.00

Dodge's Point Town Landing

RR: Resident	\$ 30.00
NRR: Non Resident	\$275.00

APPENDIX IV

FINES 2018

In Buck's Harbor, for failure to renew mooring permit and pay the applicable fee by May 1: \$100.00

In Buck's Harbor, for failure to identify mooring buoy with the permit number and with the boat owner name or boat name in legible 3" minimum height in a contrasting color by July 1: \$100.00

In Buck's Harbor, for failure to have mooring inspected by an approved inspector by July 1: \$100.00

In Buck's Harbor, for failure to have approved inspector file an Inspection Report by July 1: \$100.00.

In Smith Cove and all other non-Buck's Harbor waters, for failure to renew mooring registration and to pay the applicable fee by May 1: \$100.00

In Smith Cove and all other non-Buck's Harbor waters, for failure to identify mooring buoy with the registration number in legible 3" minimum height in a contrasting color by July 1: \$100.00

At Town Landings, for failure to renew dinghy-kayak registration and pay the applicable fee by May 1: \$100.00.

At Town Landings, for violation of any rule at a Landing: \$100.00.

APPENDIX V - BF

RULES FOR TOWN LANDING AT BAGADUCE FALLS

- ❖ Parking of unattended vehicles and/or trailers is allowed only in the designated area west of the launch ramp and only during daylight hours.
- ❖ No overnight parking is allowed at any time without written permission of the Harbormaster.
- ❖ Vehicles may park in front of and along the side of the launch area only while loading and unloading. Any vehicle left unattended in this area may be towed at its owner's expense.
- ❖ No watercraft, crates or other goods may be left unattended in the water at the launch ramp area without permission of the Harbormaster.
- ❖ No gear or other goods may be stored on the grounds of the Landing.
- ❖ All watercraft tied to the shore must (1) be tied 20' away from the launch ramp area, (2) have paid the applicable dinghy tie-up registration fee, and (3) display a Town decal.

- ❖ Please do not motor through the eelgrass, disturb the horseshoe crabs or remove any vegetation.
- ❖ All visitors must take out what they bring in, and pet owners must clean up after their pet.

THANK YOU FOR TAKING GOOD CARE OF THIS LANDING.

APPENDIX V – BC

RULES FOR TOWN LANDING AT BETSY'S COVE

- No overnight or trailer parking is allowed at any time.
- Parking is by permit only from 8am-6pm for the period July 1-Labor Day.
- All dinghies must display a 2018 Brooksville decal on the inside of the dinghy transom.
- Tie-up for dinghies is on the north side and the east end of the floats only.
- The outer two floats are reserved for dinghies of commercial fishermen and other marine-related businesses.
- One dinghy may be registered per individual, family, or household.
- Maximum dinghy size (length + beam overall) is 22'. Length alone may not exceed 16'; beam overall, including gunwale guards, may not exceed 6'.
- Dinghy engines are to be no more than 25 hp.
- All dinghies must have suitable rub rails, gunwale guards, or the equivalent.
- Traps and fishing gear may be left on the tie-up floats for no more than 6 hours and on the loading floats for no more than 12 hours. With these exceptions, no traps or gear may be left unattended at the facility.
- Boats may tie up unattended on south side of floats for a maximum of ½ hour during tidal access.
- If and when a waiting list for dinghy space is required, priority will be as follows:
 - Resident commercial fishermen
 - Resident recreational and other residents
 - Non-residents

THANK YOU FOR TAKING GOOD CARE OF THIS LANDING.

APPENDIX V – DP

RULES FOR TOWN LANDING AT DODGE’S POINT

- ❖ Vehicle parking only is allowed in the 11 designated spaces. No parking is allowed anywhere else at the Landing, in the adjoining fields or on Town Landing Rd.
- ❖ No overnight and no trailer parking is allowed without written permission of the Harbormaster.
- ❖ All dinghies and kayaks must display a current registration decal. Registration decals are to be placed on upper inside of dinghy transom or on outside bow of kayak.
- ❖ No private outhauls are allowed.
- ❖ One dinghy may be registered per individual, family, or household.
- ❖ Any number of kayaks may be registered per individual, family, or household.
- ❖ Maximum dinghy size (length + beam) is 22'. Length alone may not exceed 16'; beam overall, including gunwale guards, may not exceed 6'.
- ❖ Tie-up for dinghies is on the tie-up rails of the middle 6 floats only. No tie-up is allowed on the end float or within 20' of the swim ladder.
- ❖ Dinghy engines are to be no more than 25 hp.
- ❖ All dinghies must have suitable rub rails, gunwale guards, or the equivalent.
- ❖ Gear may be left on the floats for no more than 6 hours.
- ❖ Boats may tie up unattended on the end float for a maximum of ½ hour during tidal access.

If and when a waiting list for dinghy space is required, priority will be as follows:

1. resident commercial
2. resident recreational
3. non-residents

THANK YOU FOR TAKING GOOD CARE OF THIS LANDING.

Adopted by Referendum Vote (112 to 64) on March 4, 2013

Local Food and Community Self-Governance Ordinance

Section 1. Name. This Ordinance shall be known and may be cited as the “Local Food and Community Self-Governance Ordinance.”

Section 2. Definitions.

As used in this ordinance:

- (a) “Patron” means an individual who is the last person to purchase any product or preparation directly from a processor or producer and who does not resell the product or preparation.
- (b) “Home consumption” means consumed within a private home.
- (c) “Local Foods” means any food or food product that is grown, produced, or processed by individuals who sell directly to their patrons through farm-based sales or buying clubs, at farmers markets, roadside stands, fundraisers or at community social events.
- (d) “Processor” means any individual who processes or prepares products of the soil or animals for food or drink.
- (e) “Producer” means any farmer or gardener who grows any plant or animal for food or drink.
- (f) “Community social event” means an event where people gather as part of a community for the benefit of those gathering, or for the community, including but not limited to a church or religious social, school event, potluck, neighborhood gathering, library meeting, traveling food sale, fundraiser, craft fair, farmers market and other public events.

Section 3. Preamble and Purpose. We the People of the Town of Brooksville, Hancock County, Maine have the right to produce, process, sell, purchase and consume local foods thus promoting self-reliance, the preservation of family farms, and local food traditions. We recognize that family farms, sustainable agricultural practices, and food processing by individuals, families and non-corporate entities offers stability to our rural way of life by enhancing the economic, environmental and social wealth of our community. As such, our right to a local food system requires us to assert our inherent right to self-government. We recognize the authority to protect that right as belonging to the Town of Brooksville.

We have faith in our citizens’ ability to educate themselves and make informed decisions. We hold that federal and state regulations impede local food production and constitute a usurpation of our citizens’ right to foods of their choice. We support food that fundamentally respects human dignity and health, nourishes individuals and the community, and sustains producers, processors and the environment. We are therefore duty bound under the Constitution of the State of Maine to protect and promote unimpeded access to local foods.

The purpose of the Local Food and Community Self-Governance Ordinance is to:

- (i) Provide citizens with unimpeded access to local food;
- (ii) Enhance the local economy by promoting the production and purchase of local agricultural products;

- (iii) Protect access to farmers' markets, roadside stands, farm based sales and direct producer to patron sales;
- (iv) Support the economic viability of local food producers and processors;
- (v) Preserve community social events where local foods are served or sold;
- (vi) Preserve local knowledge and traditional food ways.

Section 4. Authority. This Ordinance is adopted and enacted pursuant to the inherent, inalienable, and fundamental right of the citizens of the Town of Brooksville to self-government, and under the authority recognized as belonging to the people of the Town by all relevant state and federal laws including, but not limited to the following:

The Declaration of Independence of the United States of America, which declares that governments are instituted to secure peoples' rights, and that government derives its just powers from the consent of the governed.

Article I, § 2 of the Maine Constitution, which declares: "all power is inherent in the people; all free governments are founded in their authority and instituted for their benefit, [and that] they have therefore an unalienable and indefeasible right to institute government and to alter, reform, or totally change the same when their safety and happiness require it."

§3001 of Title 30-A of the Maine Revised Statutes, which grants municipalities all powers necessary to protect the health, safety, and welfare of the citizens of the Town of Brooksville.

§211 of Title 7 of the Maine Revised Statutes which states: "it is the policy of the State to encourage food self-sufficiency for the State."

Section 5. Statements of Law.

Section 5.1. Licensure/Inspection Exemption. Producers or processors of local foods in the Town of Brooksville are exempt from licensure and inspection provided that the transaction is only between the producer or processor and a patron when the food is sold for home consumption. This includes any producer or processor who sells his or her products at farmers' markets or roadside stands; sells his or her products through farm-based sales directly to a patron; or delivers his or her products directly to patrons.

Section 5.1.a. Licensure/Inspection Exemption. Producers or processors of local foods in the Town of Brooksville are exempt from licensure and inspection provided that their products are prepared for, consumed, or sold at a community social event.

Section 5.2. Right to Access and Produce Food. Brooksville citizens possess the right to produce, process, sell, purchase, and consume local foods of their choosing.

Section 5.3. Right to Self-Governance. All citizens of Brooksville possess the right to a form of governance which recognizes that all power is inherent in the people, that all free governments are founded on the people's authority and consent.

Section 5.4. Right to Enforce. Brooksville citizens possess the right to adopt measures which prevent the violation of the rights enumerated in this Ordinance.

Section 6. Statement of Law. Implementation. The following restrictions and provisions serve to implement the preceding statements of law.

Section 6.1. State and Federal Law. It shall be unlawful for any law or regulation adopted by the state or federal government to interfere with the rights recognized by this Ordinance. It shall be unlawful for any corporation to interfere with the rights recognized by this Ordinance. The term 'corporation' shall mean any business entity organized under the laws of any state or country.

Section 6.2. Patron Liability Protection. Patrons purchasing food for home consumption may enter into private agreements with those producers or processors of local foods to waive any liability for the consumption of that food. Producers or processors of local foods shall be exempt from licensure and inspection requirements for that food as long as those agreements are in effect.

Section 7. Civil Enforcement. The Town of Brooksville may enforce the provisions of this Ordinance through seeking equitable relief from a court of competent jurisdiction. Any individual citizen of the Town of Brooksville shall have standing to vindicate any rights secured by this ordinance which have been violated or which are threatened with violation, and may seek relief both in the form of injunctive and compensatory relief from a court of competent jurisdiction.

Section 8. Town Action against Pre-emption. The foundation for making and adoption of this law is the peoples' fundamental and inalienable right to govern themselves, and thereby secure their rights to life, liberty, and the pursuit of happiness. Any attempt to use other units and levels of government to preempt, amend, alter or overturn this Ordinance or parts of this Ordinance shall require the Town to hold public meetings that explore the adoption of other measures that expand local control and the ability of citizens to protect their fundamental and inalienable right to self-government. It is declared that those other measures may legitimately include the partial or complete separation of the Town from the other units and levels of government that attempt to preempt, amend, alter, or overturn this Ordinance.

Section 9. Effect. This Ordinance shall be effective immediately upon its enactment.

Section 10. Severability Clause. To the extent any provision of this Ordinance is deemed invalid by a court of competent jurisdiction, such provision will be removed from the Ordinance, and the balance of the Ordinance shall remain valid.

Section 11. Repealer. All inconsistent provisions of prior Ordinances adopted by the Town of Brooksville are hereby repealed, but only to the extent necessary to remedy the inconsistency.


MORATORIUM ORDINANCE
On Retail Marijuana Establishments and
Retail Marijuana Stores and
Retail Marijuana Social Clubs

FOR THE

TOWN OF BROOKSVILLE, MAINE

ADOPTED: March 6, 2017

EFFECTIVE: March 6 - September 2, 2017

CERTIFIED BY: 
SIGNATURE Amber Bakeman

PRINTED NAME
TITLE: Town Clerk



MORATORIUM ORDINANCE ON RETAIL MARIJUANA ESTABLISHMENTS AND RETAIL MARIJUANA STORES AND RETAIL MARIJUANA SOCIAL CLUBS

WHEREAS, the "Marijuana Legalization Act" has become law in Maine, codified in the Maine Revised Statutes in Title 7, chapter 417; and

WHEREAS, the Marijuana Legalization Act (hereinafter, "Act") authorizes municipalities to regulate the number of retail marijuana stores and the location and operation of retail marijuana social clubs and retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities and retail marijuana testing facilities, as those terms are defined in the Act, as well as providing the option to prohibit the operation of retail marijuana social clubs and retail marijuana establishments, including stores, cultivation facilities, manufacturing facilities and testing facilities, within their jurisdiction; and

WHEREAS, the proposed Act will not limit the privileges or rights afforded by the Maine Medical Use of Marijuana Act (22 M.R.S.A. §§2421–2430-B) to qualifying patients, primary caregivers, or registered dispensaries, including cultivation facilities associated with any of those classifications; and

WHEREAS, the Town of Brooksville's current ordinances do not include any regulations related to retail marijuana stores, retail marijuana establishments or retail marijuana social clubs under the proposed new Act; and

WHEREAS, the unregulated location and operation of retail marijuana establishments, retail marijuana stores and retail marijuana social clubs within the Town of Brooksville (hereinafter, "Town") raises legitimate and substantial questions about the impact of such establishments, stores and social clubs on the Town, including questions about the compatibility of retail marijuana establishments, retail marijuana stores and retail marijuana social clubs with existing uses and development in residential and commercial districts; the potential adverse health and safety effects of retail marijuana establishments, retail marijuana stores and retail marijuana social clubs on the community if not properly regulated; the possibility of illicit sale and use of marijuana and marijuana products to minors and misuse of marijuana and marijuana products by those who would abuse the uses authorized under the Act; potential criminal activity associated with the cultivation, manufacturing, sale and use of marijuana and marijuana products for non-medicinal purposes and the potential increased burden on the Town's Fire Department and other public safety agencies serving the Town; and the adequacy of the Town's streets and infrastructure to accommodate the additional traffic and/or population that may result from the presence of retail marijuana establishments, retail marijuana stores or retail marijuana social clubs; and

WHEREAS, the possible effect of the location and operation of retail marijuana establishments and/or retail marijuana stores and/or retail marijuana social clubs within the Town has potentially serious implications for the health, safety and welfare of the Town and its residents; and

WHEREAS, the Town needs time to review the Act and to review its own ordinances to determine the implications of future proposed retail marijuana establishments and/or retail marijuana stores and/or retail marijuana social clubs and to develop reasonable ordinances governing the location and operations of such establishments and stores and social clubs to address the concerns cited above; and

WHEREAS, the Town's current ordinances are insufficient to prevent serious public harm that could be caused by the unregulated development of retail marijuana establishments and retail marijuana stores and retail marijuana social clubs and other uses authorized by the Act, thereby necessitating a moratorium; and

WHEREAS, the Town officers and Planning Board shall study the Town's current ordinances to determine the land use and other regulatory implications of retail marijuana establishments and retail marijuana stores and retail marijuana social clubs and consider what locations, if any, and conditions of approval, if any, might be appropriate for such uses; and

WHEREAS, a moratorium is necessary to prevent an overburdening of public facilities that is reasonably foreseeable as the result of retail marijuana establishments and retail marijuana stores and retail marijuana social clubs and other uses authorized by the Act being located in the Town; and

WHEREAS, it is anticipated that such a study, review, and development of recommended ordinance changes will take at least one hundred and eighty (180) days from the date the Town enacts this Moratorium Ordinance on retail marijuana establishments and retail marijuana stores and retail marijuana social Clubs;

NOW, THEREFORE, be it ordained by the Town of Brooksville that the following Moratorium Ordinance on retail marijuana establishments and retail marijuana stores and retail marijuana social clubs be, and hereby is, enacted, and, in furtherance thereof, the Town does hereby declare a moratorium on the location, operation or licensing of any retail marijuana social clubs and any retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities and retail marijuana testing facilities, within the Town.

This Moratorium Ordinance shall take effect, once enacted by Town, but shall be applicable as of March 6, 2017, as expressly provided below. The moratorium shall remain in effect for one hundred and eighty (180) days from the

date of applicability of this Ordinance, unless extended, repealed, or modified by the Selectmen, for the express purpose of drafting an ordinance and/or an amendment or amendments to the Town's current ordinances to protect the public from health and safety risks including, but not limited to, compatibility of retail marijuana establishments, retail marijuana stores and retail marijuana social clubs with existing and permitted uses in the Shoreland Zone and other areas; the correlation of retail marijuana establishments, retail marijuana stores and retail marijuana social clubs with medical marijuana cultivation facilities and dispensaries, all as defined in the Act; the potential adverse health and safety effects of retail marijuana establishments and retail marijuana stores and retail marijuana social clubs on the community if not properly regulated; the possibility of illicit sale and use of marijuana and marijuana products to minors and misuse of marijuana and marijuana products by those who would abuse the uses authorized under the new law; criminal activity associated with the cultivation, manufacturing, sale and use of marijuana and marijuana products for non-medicinal purposes and the potential increased burden on the public safety agencies serving the Town in responding to the same; and the adequacy of the Town's infrastructure to accommodate the additional traffic and/or population that may result from the presence of retail marijuana establishments or retail marijuana stores or retail marijuana social clubs in the Town.

BE IT FURTHER ORDAINED, that this Ordinance shall apply to retail marijuana stores and retail marijuana social clubs and retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities and retail marijuana testing facilities, as those terms are defined by the Act, codified at 7 M.R.S.A. §§2442 (36), (38), (39), (40) (41), that may be proposed to be located within the Town on or after the applicability date of this Ordinance; and

BE IT FURTHER ORDAINED, that notwithstanding the provisions of 1 M.R.S.A. §302 or any other law to the contrary, this Ordinance, when enacted, shall govern any proposed retail marijuana establishments or retail marijuana stores or retail marijuana social clubs for which an application for a building permit, Certificate of Occupancy, site plan or any other required approval has not been submitted to and granted final approval by the Code Enforcement Officer, Planning Board or other Town official or board prior to the applicability date of this Ordinance; and

BE IT FURTHER ORDAINED, that no person or organization shall develop or operate a retail marijuana establishment or retail marijuana store or retail marijuana social club within the Town on or after the effective date of this Ordinance without complying with whatever Ordinance amendment or amendments the Town may enact as a result of this Moratorium Ordinance; and

BE IT FURTHER ORDAINED, that during the time this Moratorium Ordinance is in effect, no officer, official, employee, office, administrative board or agency of the Town shall accept, process, approve, deny, or in any other way

act upon any application for a license, building permit or any other type of land use approval or permit and/or any other permits or licenses related to a retail marijuana establishment or retail marijuana stores or retail marijuana social club; and

BE IT FURTHER ORDAINED, that those provisions of the Town's ordinances that are inconsistent or conflicting with the provisions of this Ordinance are hereby repealed to the extent that they are applicable for the duration of the moratorium hereby ordained, and as it may be extended as permitted by law, but not otherwise; and

BE IT FURTHER ORDAINED, that if retail marijuana establishments or retail marijuana stores or retail marijuana social clubs are established in violation of this Ordinance, each day of any continuing violation shall constitute a separate violation of this Ordinance, and the Town shall be entitled to all rights available to it in law and equity, including, but not limited to, fines and penalties, injunctive relief, and its reasonable attorney's fees and costs in prosecuting any such violations; and

BE IT FURTHER ORDAINED, that should any section or provision of this Ordinance be declared by any court of competent jurisdiction to be invalid, such a declaration shall not invalidate any other section or provision.

Applicability Date: March 6, 2017

Adopted at 4/28/2011 Special Election

ORDINANCE COMMITTEE ORDINANCE
TOWN OF BROOKSVILLE

Section 1: TITLE

This Ordinance shall be known and cited as the "Ordinance Committee Ordinance" of Brooksville, Maine (hereinafter referred to as the "ordinance").

Section 2: AUTHORITY

This ordinance is adopted pursuant to the enabling provisions of Title 30-A MRSA Section 3001 (Home Rule).

Section 3: PURPOSE

The purpose of this ordinance is to provide a process and procedure for (1) the preparation of Town-initiated new ordinances and (2) the review of voter-initiated ordinances and of amendments to existing ordinances, proposed for enactment by the Town's voters.

Section 4: MEMBERSHIP

The Committee shall consist of the members of the Town Planning Board, the members of the Town Comprehensive Planning Committee who have accepted appointment by March 30th of each year, and up to four other members appointed by the Selectmen for a two-year term, sitting together as a joint committee.

Section 5: PROCEDURE

5.1 The Committee shall annually elect a chairman from among its membership at the first meeting of the Committee following the annual town meeting.

5.2 A majority of the Committee's members shall constitute a quorum for all purposes. All actions and recommendations of the Committee must be approved by a majority vote of those voting.

5.3 Except for ordinances or amendments designated by the Selectmen as emergency measures and development moratorium ordinances proposed under 30-A MRSA section 4356, all proposed new ordinances shall be submitted by the Selectmen to the Committee for preparation if Town-proposed and for review if voter-initiated.

5.4 Amendments to existing ordinances proposed for enactment by the voters by referendum shall be submitted to the Committee for review; those proposed for

enactment at an open town meeting may be submitted to the Committee for review.

5.5 Unless additional time is necessary, the Committee shall complete its preparation and/or review within forty-five (45) days after referral and shall so advise the Selectmen.

5.6 The Town shall conduct at least one public hearing, including public hearings required by law, on each proposed new ordinance and on any ordinance amendment proposed for enactment by referendum, and shall give all required notices for this purpose.

5.7 Following the public hearing, the Committee may issue a recommendation to the Selectmen in writing either for or against adoption of the ordinance and amendment as proposed, together with reasons for the Committee's recommendation. The Committee's report may include suggested amendments to Town-proposed ordinances and amendments and recommended alternative proposals to voter-initiated proposed ordinances.

5.8 Upon approval by the Selectmen, the Committee may engage legal counsel to review and give opinions concerning the legality and enforceability of any proposed ordinance or amendment.

Section 6: CONFLICT AND SEVERABILITY

6.1 Conflicts. Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or of any other ordinance, regulation or statute administered by the municipality, the more restrictive provision shall apply.

6.2 Severability. The invalidity of any part of this ordinance shall not invalidate any other part of this ordinance.

Section 7: EFFECTIVE DATE

This ordinance becomes effective immediately upon passage by the Town.

Adopted at STM January 27, 2011

PROPERTY ASSESSED CLEAN ENERGY (PACE) ORDINANCE
TOWN OF BROOKSVILLE

PREAMBLE

WHEREAS, the 124th Maine Legislature has enacted Public Law 2009, Chapter 591, "An Act to Increase the Affordability of Clean Energy for Homeowners and Businesses," also known as "the Property Assessed Clean Energy Act" or "the PACE Act"; and

WHEREAS, that Act authorizes a municipality that has adopted a Property Assessed Clean Energy ("PACE") Ordinance to establish a PACE program so that owners of qualifying property can access financing for energy saving improvements to their properties located in the City/Town, financed by funds awarded to the Efficiency Maine Trust under the Federal Energy Efficiency and Conservation Block Grant (EECBG) Program and by other funds available for this purpose, and to enter into a contract with the Trust to administer functions of its PACE program; and

WHEREAS, the Municipality wishes to establish a PACE program; and

NOW THEREFORE, the Municipality hereby enacts the following Ordinance:

Section 1: TITLE

This Ordinance shall be known and may be cited as "the Town of Brooksville Property Assessed Clean Energy (PACE) Ordinance" (the "Ordinance")."

Section 2: PURPOSE

By and through this Chapter, the Town of Brooksville declares as its public purpose the establishment of a municipal program to enable its citizens to participate in a Property Assessed Clean Energy ("PACE") program so that owners of qualifying property can access financing for energy saving improvements to their properties located in the Town. The Town declares its purpose and the provisions of this Chapter/Ordinance to be in conformity with federal and State laws.

Section 3: ENABLING LEGISLATION

The Town enacts this Ordinance pursuant to Public Law 2009, Chapter 591 of the 124th Maine State Legislature -- "An Act To Increase the Affordability of Clean Energy for Homeowners and Businesses," also known as "the Property Assessed Clean Energy Act" or "the PACE Act" (codified at 35-A M.R.S.A. § 10151, *et seq.*).

Section 4: PACE PROGRAM

4.1. Establishment; funding. The Municipality hereby establishes a PACE program allowing owners of qualifying property located in the PACE district who so choose to access financing for energy saving improvements to their property through PACE loans administered by the Trust or its agent. PACE loan funds are available from the Trust in municipalities that 1) adopt a PACE Ordinance, 2) adopt and implement a local public outreach and education plan, 3) enter into a PACE administration contract with the Trust to establish the terms and conditions of the Trust's administration of the municipality's PACE program, and 4) agree to assist and cooperate with the Trust in its administration of the municipality's PACE program.

4.2. Amendment to PACE program. In addition, the Municipality may from time to time amend this Ordinance to use any other funding sources made available to it or appropriated by it for the express purpose of its PACE program, and the Municipality shall be responsible for administration of loans made from those other funding sources.

Section 5: CONFORMITY WITH THE REQUIREMENTS OF THE TRUST

Standards adopted; Rules promulgated; model documents. If the Trust adopts standards, promulgates rules or establishes model documents subsequent to the Municipality's adoption of this Ordinance and those standards, rules or model documents substantially conflict with this Ordinance, the Municipality shall take necessary steps to conform this Ordinance and its PACE program to those standards, rules, or model documents.

Section 6: PROGRAM ADMINISTRATION

6.1 PACE Administration Contract. Pursuant to 35-A M.R.S.A. §10154(2)(A)(2) and (B), the Municipality will enter into a PACE administration contract with the Trust to administer the functions of the PACE program for the Municipality. The PACE administration contract with the Trust will establish the administration of the PACE program including, without limitation, that:

- i. the Trust will enter into PACE agreements with owners of qualifying property in the Municipality's PACE district;
- ii. the Trust, or its agent, will create and record a Notice of the PACE agreement in the appropriate County Registry of Deeds to create a PACE mortgage;
- iii. the Trust, or its agent, will disburse the PACE loan to the property owner;
- iv. the Trust, or its agent, will send PACE assessment statements with payment deadlines to the property owner;

v. the Trust, or its agent, will be responsible for collection of the PACE assessments;

vi. the Trust, or its agent, will record any lien, if needed, due to nonpayment of the assessment;

vii. the Trust or its agent on behalf of the Municipality, promptly shall record the discharges of PACE mortgages upon full payment of the PACE loan.

6.2 Adoption of Education and Outreach Program. In conjunction with adopting this Ordinance, the Municipality shall adopt and implement an education and outreach program so that citizens of the Municipality are made aware of home energy saving opportunities, including the opportunity to finance energy saving improvements with a PACE loan.

6.3 Assistance and Cooperation. The Municipality will assist and cooperate with the Trust in its administration of the Municipality's PACE program.

6.4 Assessments Not a Tax. PACE assessments do not constitute a tax but may be assessed and collected by the Trust in any manner determined by the Trust and consistent with applicable law.

Section 7: LIABILITY

7.1 Liability of Municipal Officials. Notwithstanding any other provision of law to the contrary, municipal officers and municipal officials, including, without limitation, tax assessors and tax collectors, are not personally liable to the Trust or to any other person for claims, of whatever kind or nature, under or related to a PACE program, including, without limitation, claims for or related to uncollected PACE assessments.

7.2 Liability of Municipality. Other than the fulfillment of its obligations specified in a PACE administration contract with the Trust entered into under Article VI, §1(A) above, a municipality has no liability to a property owner for or related to energy savings improvements financed under a PACE program.

Section 8: DEFINITIONS

Except as specifically defined below, words and phrases used in this Ordinance shall have their customary meanings; as used in this Ordinance, the following words and phrases shall have the meanings indicated:

Energy saving improvement. “Energy saving improvement” means an improvement to qualifying property that is new and permanently affixed to qualifying property and that:

- A. Will result in increased energy efficiency and substantially reduced energy use and:
 - (1) Meets or exceeds applicable United States Environmental Protection Agency and United States Department of Energy Energy Star program or similar energy efficiency standards established or approved by the Trust; or
 - (2) Involves air sealing, insulating, and other energy efficiency improvements residential, commercial or industrial property in a manner approved by the Trust; or
- B. Involves a renewable energy installation or an electric thermal storage system that meets or exceeds standards established or approved by the trust.

Municipality. “Municipality” shall mean the Town of Brooksville.

PACE agreement. “Pace agreement” means an agreement between the owner of qualifying property and the Trust that authorizes the creation of a PACE mortgage on qualifying property and that is approved in writing by all owners of the qualifying property at the time of the agreement, other than mortgage holders.

PACE assessment. “PACE assessment” means an assessment made against qualifying property to repay a PACE loan.

PACE district. “Pace district” means the area within which the Municipality establishes a PACE program hereunder, which is all that area within the Municipality’s boundaries.

PACE loan. “PACE loan” means a loan, secured by a PACE mortgage, made to the owner(s) of a qualifying property pursuant to a PACE program to fund energy saving improvements.

PACE mortgage. “PACE mortgage” means a mortgage securing a loan made pursuant to a PACE program to fund energy saving improvements on qualifying property.

PACE program. “PACE program” means a program established under State statute by the Trust or a municipality under which property owners can finance energy savings improvements on qualifying property.

Qualifying property. "Qualifying property" means real property located in the PACE district of the Municipality.

Renewable energy installation. "Renewable energy installation" means a fixture, product, system, device or interacting group of devices installed behind the meter at a qualifying property, or on contiguous property under common ownership, that produces energy or heat from renewable sources, including, but not limited to, photovoltaic systems, solar thermal systems, biomass systems, landfill gas to energy systems, geothermal systems, wind systems, wood pellet systems and any other systems eligible for funding under federal Qualified Energy Conservation Bonds or federal Clean Renewable Energy Bonds.

Trust. "Trust" means the Efficiency Maine Trust established in 35-A M.R.S.A. § 10103 and/or its agent(s), if any.

PLANNING BOARD ORDINANCE

TOWN OF BROOKSVILLE, MAINE

ENACTED: March 5, 2013
Date

CERTIFIED BY: [Signature]
Signature

CERTIFIED BY: Amber Bakeman
Print Name

Town Clerk
Title

Affix Seal



PLANNING BOARD ORDINANCE

TOWN OF BROOKSVILLE, MAINE MARCH 5, 2018

Section 1: ESTABLISHMENT

1.1 Pursuant to the Maine Constitution Art. VIII-A, the Town of Brooksville hereby establishes the Town of Brooksville Planning Board.

1.2 This Ordinance shall be subordinate to existing Federal and State Laws governing the same matters. Where found to be in conflict with higher Federal or State authority that portion of the Ordinance would be null and void; otherwise the Ordinance will stay in full force.

Section 2: EFFECTIVE DATES

2.1 The Establishment of the Town of Brooksville Planning Board in 1988 is hereby repealed.

2.2 This Ordinance and any subsequent amendment shall take effect and be in force from the date of its adoption by the Town.

Section 3: MEMBERSHIP

3.1 The Board shall consist of five members and may have two associate members.

3.2 Board members shall be elected by secret ballot on the Annual Town Warrant and sworn by the clerk or other person authorized to administer oaths.

3.3 The term of a Board member shall be three years, with members elected on a three-year successive cycle of two (2) members, two (2) members, and one (1) member.

3.4 The associate members shall be appointed by the municipal officers for a term of three years.

3.5 When there is a permanent vacancy, the municipal officers shall, within 60 days of its occurrence, appoint a person to serve until the next regularly scheduled election. A vacancy shall occur upon the resignation or death of any member, or when a member fails to attend four consecutive regularly scheduled meetings or fails to attend at least 75% of all meetings during the preceding 12-month period. When a vacancy occurs, the chairman shall immediately so advise the municipal officers in writing. The Board may recommend that the attendance provision be waived for cause, in which no vacancy will then exist until the municipal officers disapprove the recommendation. The municipal officers may remove members of the Planning Board by unanimous vote, for cause, after notice and hearing.

3.6 A municipal officer may not be a member or an associate member.

Section 4: ORGANIZATION AND RULES

4.1 The Board shall elect a chairman and a secretary from among its members and create and fill such offices as it may determine. The term of all officers shall be one year with eligibility for re-election.

4.2 When a member is unable to act because of interest, physical incapacity, absence or any other reason satisfactory to the chairman, the chairman shall designate an associate member to sit in his/her stead.

4.3 An associate member may attend all meetings of the Board and participate in all its proceedings, but may vote only when designated by the chairman to sit for a member.

4.4 Any question of whether a member shall be disqualified from voting on a particular matter shall be decided by a majority vote of the members, except the member who is being challenged.

4.5 The chairman shall call at least one regular meeting of the Board each month.

4.6 No meeting of the Board shall be held without a quorum consisting of at least four members or associate members authorized to vote.

4.7 The Board shall adopt rules for the transaction of business and the secretary shall keep a record of its resolutions, transactions, correspondence, findings and determinations. All records shall be deemed public and may be inspected at reasonable times.

Section 5: DUTIES AND POWERS

5.1 The Board shall perform such duties and exercise such powers as are provided by the ordinances of the Town and the laws of the State of Maine.

5.2 The Board may obtain goods and services necessary to its proper function within the limits of appropriations made for this purpose.

Section 6: VALIDITY AND SEVERABILITY

Should any section or part of a section or any provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such declaration shall not affect the validity of this Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

Road Entrance Permit Ordinance

of the Town of Brooksville

Brooksville, Maine

adopted at Special Town Meeting

May 18, 2005

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ROAD ENTRANCE PERMIT ORDINANCE OF THE TOWN OF
BROOKSVILLE, MAINE

SECTION I. AUTHORITY

This ordinance shall be entitled "Road Entrance Permit Ordinance of the Town of Brooksville" and is enacted pursuant to Title 30-A M.R.S.A. §3001.

SECTION II. DEFINITION OF ROAD

For the purposes of this Ordinance a Road is defined to be: a route or track in public or private ownership consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by repeated passage of motorized vehicles, but not including "Farm Roads" as defined below.

SECTION III. ADDITIONAL DEFINITIONS

Arterial Road: Any federal or state-aid highway or other major Road designed primarily for non-local travel through or within the Town. For purposes of this Ordinance, "Arterial Road" shall include all Roads designated as major or arterial roads in the Town's Comprehensive Plan.

Cross Corner Sight Distances: The length of an unobstructed view from a particular access point across land adjacent to a roadway. Cross Corner Sight Distances shall be determined based on a 3.5' observer height and a 4.25' object height, as measured from the center line elevation of the Road.

Driveway: A privately-owned vehicular access way serving no more than two individual properties, dwelling units, or principal use structures.

Entrance: The point at which any Driveway, Private Street or Town Way connects to the traveled portion of any existing Town Way.

Farm Road: A private access way that is used solely to provide access to undeveloped land for agricultural, forestry, timber harvesting, hunting or recreational purposes, but not including Roads or Streets in subdivisions.

MDOT: The Maine Department of Transportation.

Private Street: A Street or Road, other than a Driveway, that has not been laid out, dedicated to or accepted by the Town as a public way.

Roadway Sight Distance: The length of an unobstructed view from a particular access point to the farthest visible point of reference on a roadway. Used in this Ordinance as a measure of unobstructed road visibility. Roadway Sight Distance shall be determined

based on a 3.5' observer height and a 6" object height, as measured from the center line elevation of the Road.

Street: Public and private ways such as alleys, avenues, highways, roads, and other rights-of-way, as well as areas on subdivision plans designated as rights-of-way for vehicular access, other than Driveways. A Road.

Town: The Town of Brooksville, Maine.

Town Way: A Road or Street that has been laid out or accepted by the Town as a public way. A Road or Street Entrance proposed for acceptance as a Town Way shall be classified as a Town Way for purposes of this Ordinance.

SECTION IV. APPLICABILITY

A. General

On and after the effective date of this Ordinance, no person shall construct any new Entrance onto any Town Way, or improve, reconstruct or relocate any existing Entrance, unless the Planning Board has first granted a permit for that purpose in accordance with the approval standards contained in this Ordinance. No person shall construct any new Entrance, or improve, reconstruct or relocate any existing Entrance, except in compliance with the Planning Board's permit.

This Ordinance shall not apply to routine maintenance and/or minor driveway improvement, including addition of gravel or culvert(s) and/or pavement of an existing driveway, within the footprint of the existing driveway, provided such activity does not result in a relocation of the entrance of the existing driveway onto a public way or materially expand the footprint of the existing driveway.

B. Town Ways

On and after the effective date of this Ordinance, except as provided in subsection VIII(B) below, the Board of Selectmen shall not lay out a Town Way under Title 23 M.R.S.A. § 3022, as amended, unless the Planning Board has first approved a permit for any proposed Entrances as provided in this Ordinance.

On and after the effective date of this Ordinance, except as provided in subsection VIII(B) below, the Board of Selectmen shall not submit a warrant article to a Town Meeting for the purpose of accepting a Road as a Town Way under Title 23 M.R.S.A. § 3025, as amended, unless the Planning Board has first approved a permit for any proposed Entrances as provided in this Ordinance, and unless all Entrances have been designed and constructed in compliance with the Planning Board's permit.

C. Subdivisions

The Planning Board shall not approve any proposed subdivision plan unless all new Entrances proposed in the subdivision plan are designed and subsequently constructed in accordance with the requirements of this Ordinance. The Planning Board is not precluded by this Ordinance from imposing additional or more stringent requirements for design or construction of particular Roads or Streets within a proposed subdivision, when the Planning Board determines that such additional or more stringent requirements are necessary to meet one or more of subdivision approval standards under the Subdivision Ordinance and Title 30-A M.R.S.A. § 4404.

SECTION V. APPLICATION REQUIREMENTS

All persons seeking approval of a proposed Entrance, including improvement, reconstruction or relocation of an existing Entrance, shall submit a written application to the Planning Board that shall contain the following information and plans:

A. Application Contents

1. Applicant's name, address, telephone number and the application date.
2. Names of the owners of record of the land to be served by the proposed Entrance, together with a copy of the most recent deed or record conveying title to the land concerned.
3. The location of the proposed Entrance and the name of the Town Way to be connected to.
4. The posted speed limit of the Town Way to be connected to, at the Entrance location.
5. A plan for construction, improvement, reconstruction or relocation of the Entrance containing the information required in paragraph (B) below.
6. Anticipated Roadway Sight Distances for the Entrance, in both directions, following completion of the work for which the permit is requested.
7. The following application fees payable to the Town of Brooksville.
 - a.) \$25 for any single entrance onto a town way from any lot or subdivision;
 - b.) \$200 per entrance for each additional entrance onto a town way from any lot or subdivision;

c.) \$25 for applications to improve, reconstruct or relocate an existing entrance.

B. Information to be Included in Plans

Application plans shall be drawn to scale and shall depict the following information:

1. Date, scale of the plan, and direction of magnetic north.
2. Boundary lines of the premises to be served by the Entrance, including right-of-way lines of the Town Way to be connected to and the physical location of the improved or traveled portion of the Town Way within the public right-of-way.
3. Dimensions and boundary lines of any public or private utility easements and other rights-of-way located within 200 feet of the Entrance.
4. Boundary lines of all other lots fronting on the Town Way within 200 feet of the Entrance.
5. The dimensions and location of all other existing Entrances and buildings located within 200 feet of the Entrance for which the permit is requested.
6. The elevation and grade of the proposed Entrance in relation to the elevation of the Town Way at the entrance location. Grade information shall be provided for a distance of 50 feet back from the Town Way right-of-way line. Where construction, improvement, reconstruction or relocation of the Entrance will change any existing elevations, the proposed changes must be indicated in the plan.
7. All natural and artificial waterways and drainage ditches on land within 200 feet of the Entrance.
8. A depiction of existing visual obstructions in or within five feet (5') of the Town Way right-of-way, located within 200 feet of the Entrance, including but not limited to trees and other vegetation, rock walls, fences, garages and other outbuildings, permanent signs, utility structures, rock outcroppings and ledge cuts.

C. Subdivision Applications

When approval of an Entrance is sought as part of a proposed subdivision, the applicant shall submit to the Planning Board all information required in paragraphs A and B above as an integral part of their plot plan and application for subdivision approval as required by the Subdivision Ordinance. In that event, the subdivision application shall serve as the application for approval of the Entrance.

D. Waiver of Plan Requirements

When a permit is requested for minor improvements to an existing Entrance that will not involve enlargement or relocation of the Entrance, the Planning Board may grant appropriate waivers of the plan requirements under paragraph B above, provided that the Planning Board may require a full submittal in accordance with paragraph B above whenever existing sight lines with respect to the Entrance concerned do not meet the standards of Section VI(B) below.

E. Planning Board Review and Comment

Upon receipt of an application under this Ordinance, including a subdivision application, the Planning Board shall schedule a public hearing to review the application. If the Entrance is to be part of a proposed subdivision, the Planning Board shall conduct its public hearing concurrently with its review of the subdivision application.

If the Planning Board determines that information submitted with the application is insufficient to fully inform the Board of existing conditions at the Entrance location, the Planning Board may take a view of the location concerned. The view shall be posted and announced in advance, as a public meeting of the Board.

The Planning Board shall have final approval authority for all Entrance permits. Within 30 days following close of the public hearing, the Planning Board shall issue its written decision granting or denying the permit application, and in the case of a proposed Town Way shall make a written recommendation to the Board of Selectmen concerning acceptance or non-acceptance, based on compliance of the proposed Town Way with the requirements of this Ordinance. If the application concerned is made as part of a subdivision application, the Planning Board's findings and decision shall be included in its written decision on the subdivision application.

SECTION VI. ENTRANCE DESIGN STANDARDS

All proposed Entrances and intersections shall be designed and constructed to meet the design standards of this section plus applicable MDOT requirements.

A. General Requirements

All new Entrances onto a Town Way approved after the effective date of this Ordinance must be designed and constructed in compliance with the standards of subsection VI(B) below.

The Planning Board may approve permits for improvement, reconstruction or relocation of Entrances existing as of the effective date of this Ordinance that do not comply with subsection VI(B) below, provided that the improvements, reconstruction or relocation have the effect of bringing such existing Entrance more nearly into compliance

with subsection VI(B). The Planning Board shall not approve any permit application for such existing Entrances that has the effect of increasing the non-conforming aspects of such existing Entrances under subsection VI(B) below.

B. Design Standards

1. Intersections. Intersections of Roads shall be at angles as close to 90 degrees as possible and in no case shall two Roads intersect at an angle smaller than 70 degrees.

2. Alignment. Cross (four-cornered) road intersections shall be avoided insofar as possible, except as shown on the Comprehensive Plan, or as permitted or required by MDOT access management rules. A minimum distance of at least 200 feet shall be maintained between center lines of offsetting intersecting Roads, except as permitted or required by MDOT access management rules.

3. Cross Corner Sight Distances / Corner Lots. Entrances and Road intersections shall be designed so as to provide adequate visibility for pedestrians and vehicular traffic. Corner lots shall be cleared of all growth (except isolated trees) and obstructions above the level 3' higher than the center-line of the road as necessary to provide 25 foot Cross Corner Sight Distances at Entrances and between intersecting Roads. If directed, ground shall be excavated to achieve visibility.

An illustrative sketch depicting typical cross-corner sight areas is attached.

4. Roadway Sight Distances. Any new Entrance that is established after the effective date of this Ordinance must be located, designed and constructed so as to provide the following minimum Roadway Sight Distances for vehicles on the Town Way approaching an Entrance or turning onto the Town Way from the Entrance concerned. In addition, all new Entrances onto any Arterial Road shall comply with all MDOT access requirements for the Road concerned.

<i>Posted Speed Limit On Town Way</i>	<i>Minimum Roadway Sight Distance (Feet)</i>	<i>Recommended Roadway Sight Distance (Feet)*</i>
25 mph or less	150	250
30 mph	200	300
35 mph	250	350
40 mph	325	400
45 mph	400	450
50 mph or higher	475	500

**Recommended figures are for information only.*

5. Grades. All new Entrances shall be constructed so as to have a maximum three percent (3%) instantaneous grade for a distance of 50 feet back from the traveled portion of the Town Way. As an illustration, a 3% instantaneous grade is approximately equivalent to a 1 ½ foot rise in 50 feet.

6. Spacing. New Private Street, Driveway or Town Way Entrances onto any Arterial Road shall be separated near edge to near edge by the following minimum distances from existing or other proposed Entrances onto the same Arterial Road:

<i>Posted Speed Limit (Arterial Road)</i> <i>(mph)</i>	<i>Minimum Separation Distance</i> <i>(feet)</i>
up to 30 mph	125
35 mph	150
40 mph	185
45 mph or higher	230

New Private Street, Driveway or Town Way Entrances onto Town Ways other than Arterial Roads, shall be separated by a minimum of 120 feet near edge to near edge from existing or other proposed Entrances onto the same Town Way.

Notwithstanding failure to meet the foregoing separation requirements, the Planning Board may approve a single Driveway Entrance onto a non-Arterial Town Way to serve any single property having up to two hundred feet (200') of continuous frontage on that Town Way, or two Driveway Entrances for properties with more than 200 feet of continuous frontage, provided that all other design standards of this subsection VI(B) are met.

C. Private Streets

Entrances onto existing or proposed Private Streets shall be subject to approval under the same approval standards and design requirements as Entrances onto Town Ways.

SECTION VII. ADDITIONAL REQUIREMENTS

A. Soils

1. Subject to compliance with the design standards of subsection VI(B) above, grades of Entrances shall conform as closely as possible to the original topography. Where soils and ground water investigations reveal conditions which are marginal for Road construction, or where soils are shown to be poor or very poor for Road location on the Soils Map, the applicant may be required to install an elevated Entrance approach.

2. Topsoil shall be considered to be a part of the development and as such shall not be removed from the site but should be used instead for final landscaping of the Entrance.

B. Sight Vision

The line of sight for motorists entering the Town Way shall be unobstructed at the Entrance, for a distance of 5' from the public right-of-way line.

An illustrative sketch depicting typical sight vision areas is attached.

C. Erosion Control

Procedures shall be undertaken, both during preparatory, construction and cleaning stages, to prevent soil erosion and water pollution. A plan shall be prepared meeting the standards of the Hancock County Soil and Water District.

D. Clean-up

Following Entrance construction, the developer and contractor shall conduct a thorough clean-up of any debris from the entire road right-of-way.

E. Road Names

Roads which form an extension to existing roads shall bear the same name as the existing road. Names of new roads shall not duplicate or bear phonetic resemblance to the names of existing roads within the Town and shall be subject to the approval of the Board of Selectmen. New road names shall comply with all Subdivision Ordinance requirements with respect to road names, and with e-911 requirements.

SECTION VIII. WAIVERS

A. In reviewing a proposed Entrance that requires approval under this Ordinance, the Planning Board may vary or waive the requirements of this Ordinance in the same manner, and subject to the same findings, as provided in the Subdivision Ordinance with respect to subdivision approval standards.

B. Whenever the Board of Selectmen determines that the public exigency requires acceptance of a proposed Town Way that does not comply with one or more of the requirements of this Ordinance, the Board may submit the proposed acceptance for a Town Meeting vote, notwithstanding any recommendation by the Planning Board against acceptance. In that event, the full recommendation of the Planning Board shall be made available to the Town Meeting as an attachment to the warrant article concerned, together with the Selectmen's recommendation.

SECTION IX. APPEALS

Any final decision of the Planning Board under this Ordinance relating to approval of a requested Entrance permit may be appealed to the Hancock County Superior Court in the manner provided in the Subdivision Ordinance with respect to subdivision appeals.

This Ordinance shall not be deemed to create a right of appeal with respect to any action of the Planning Board, Board of Selectmen, or Town Meeting with respect to acceptance or non-acceptance of a proposed Town Way.

SECTION X. SEVERABILITY

The invalidity of any section or provision of this Ordinance shall not be held to invalidate any other section or provision of this Ordinance.

SECTION XI. ENFORCEMENT

Enforcement of this Ordinance shall be pursuant to 30-A M.R.S.A. §4452, as amended. Fines for violations of this ordinance shall be as provided in §4452, as amended.

SECTION XII. EFFECTIVE DATE

The provisions of this Ordinance shall be applicable to all new entrances constructed (including improvement, reconstruction or relocation of existing entrances) and all subdivision applications filed on or after May 18, 2005, the date of the Town Meeting adopting the ordinance.

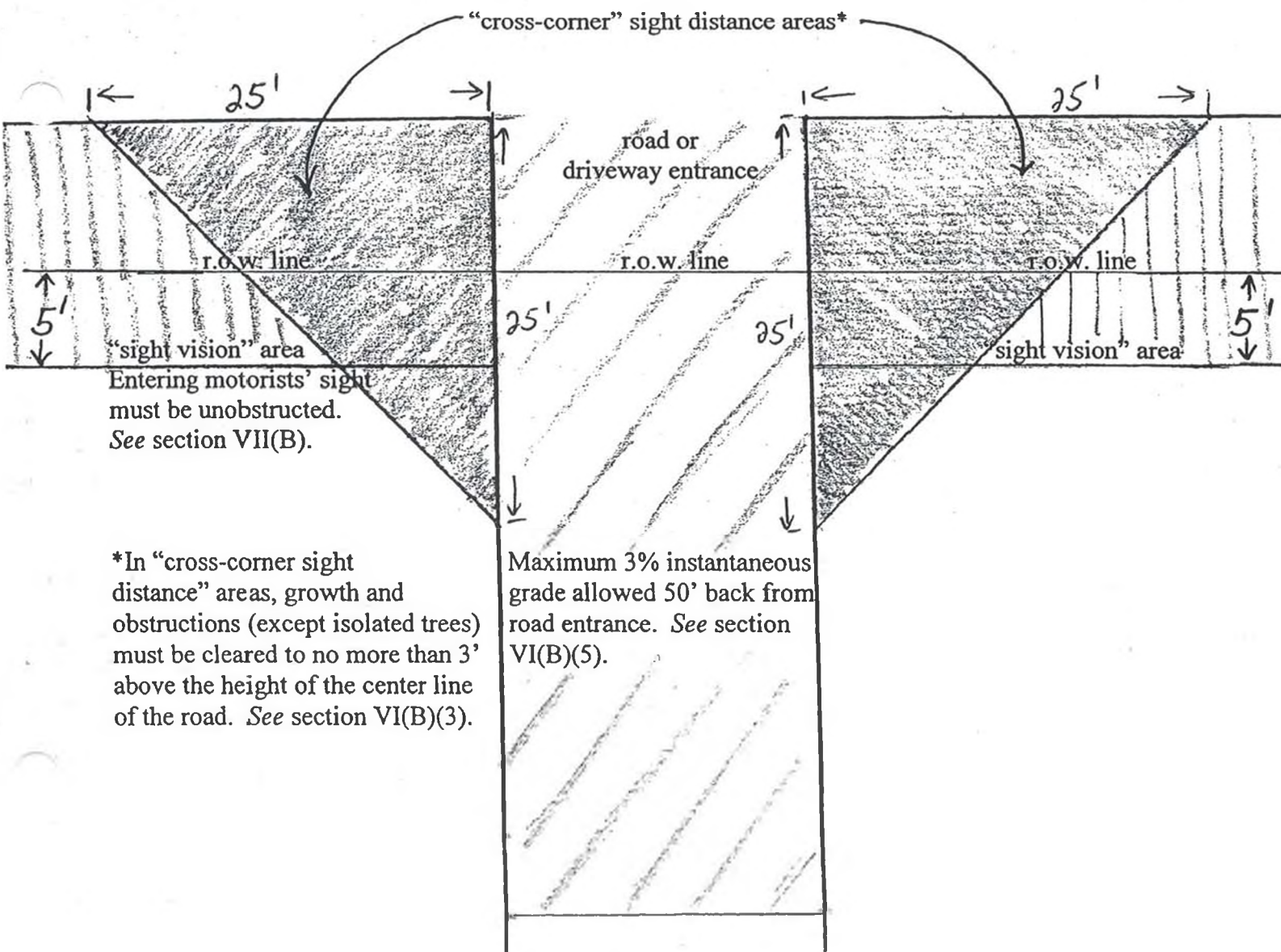
Entrance Grade, Sight Vision and
Cross-Corner Sight Distance Requirements
(Illustrative Sketch)

scale: 1" = 10'

Town road right-of-way line

traveled portion of Town road

center line of Town road



Town of Brooksville
Planning Board
Land Use & Subdivision Application Fee Schedule
& Penalties for Non-Conformance

1 APPLICATION FEE

\$ 120.00 plus per sq. ft fee

2 The PER SQUARE FEET ADDER FEE is **fifteen cents (\$.15)**per square foot of useable space. On construction other than closed in structures the square footage will be calculated using the footprint of the requested construction.

3 DOCKS & FLOATS

\$ 75.00 per

4 A PENALTY FEE of two times (2X) the normal total fee for after the fact applications.

5 SUBDIVISION APPLICATION FEE - 3 to 7 Lots **\$ 200.00 plus \$100.00 per lot**

- 8 to 14 Lots **\$ 400.00 plus \$150.00 per lot**

- 15 + Lots **\$ 600.00 plus \$200.00 per lot**

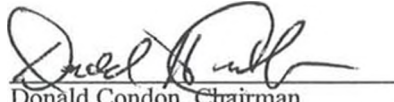
6 ENTRANCE APPLICATION FEE

\$ 50.00 per entrance

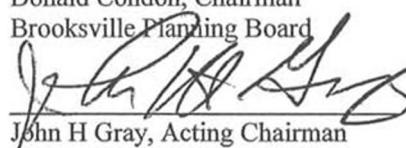
The Planning Board reserves the right to charge back to the applicant any unusual charges for legal or consultant fees associated with Subdivision Applications.



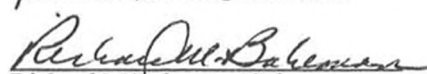
Amber Bakeman
Brooksville Town Clerk



Donald Condon, Chairman
Brooksville Planning Board



John H Gray, Acting Chairman



Richard M Bakeman, Selectman
Brooksville Select Board

Dated : February 4, 2009 at Brooksville

Changes suggested by Planning Board and approved by Selectmen on February 4, 2009.

**Adopted by Referendum Vote (153 to 118) on March 3, 2014
On Hold until Approved by the State DMR Commissioner**

**Town of Brooksville
SHELLFISH CONSERVATION ORDINANCE**

1. AUTHORITY: This ordinance is enacted in accordance with 12 MRSA Sec. 6671.
2. PURPOSE: To establish a shellfish conservation program for the Town of Brooksville which will ensure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means which may include:
 - A. Licensing.
 - B. Limiting the number of shellfish harvesters.
 - C. Restricting the time and area where digging is permitted.
 - D. Limiting the minimum size of clams taken.
 - E. Limiting the amount of clams taken daily by a harvester.

3. SHELLFISH CONSERVATION COMMITTEE: The Shellfish Conservation Program for the Town of Brooksville will be administered by the Shellfish Conservation Committee consisting of five (5) members to be appointed by the Board of Selectmen for terms of three years, except for the initial appointment which shall be for 1, 2 or 3 years. The Selectmen shall appoint a person to fill a vacancy for the unexpired term if a member resigns or is unable to serve. Three members shall constitute a quorum. The Committee shall act by majority vote calculated on the basis of those present and voting.

The Committee's responsibilities include:

- A. Establishing annually in conjunction with the Department of Marine Resources the number of shellfish digging licenses to be issued.
- B. Reviewing annually the status of the resource using the results of clam flat, harvester or dealer surveys and other sources of information and preparing in conjunction with and subject to the approval of the department a plan for implementing conservation measures.
- C. Submitting to the Board of Selectmen proposals for the expenditures of funds for the purpose of shellfish conservation.
- D. Keeping this ordinance under review and making recommendations for its amendments.
- E. Securing and maintaining records of shellfish harvest from the town's managed shellfish areas and closed areas that are conditionally opened by the Department of Marine Resources.
- F. Implementing conservation closures and openings or recommending conservation closures and openings to the Board of Selectmen in conjunction with the Area Biologists of the Department of Marine Resources.

- G. Submitting an annual report to the Municipality and the Department of Marine Resources covering the above topics and all other committee activities.
4. DEFINITIONS:
- A. Resident: The term "resident" refers to a person who has been domiciled in this municipality for at least three months next prior to the time his claim of such residence is made.
 - B. Nonresident: The term "nonresident" means anyone not qualified as a resident under this ordinance.
 - C. Shellfish, Clams and Intertidal Shellfish Resources: When used in the context of this ordinance the words "shellfish", "clams", and "intertidal shellfish resources" mean soft shell clams (*Mya arenaria*).
 - D. Municipality: Refers to the Town of Brooksville, Maine.
5. LICENSING: Municipal Shellfish Digging License is required. It is unlawful for any person to dig or take shellfish from the shores and flats of this municipality without having a current license issued by this municipality as provided by this ordinance. A Commercial Digger must also have a valid State of Maine Commercial Shellfish License issued by the Department of Marine Resources.
- A. Designation, Scope and Qualifications:
- 1) Resident Commercial Shellfish License: The license is available to residents of the municipality and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality and reciprocating municipalities.
 - 2) Junior Resident Commercial Shellfish License: The license is available to junior residents of the municipality and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality and reciprocating municipalities. Junior licenses will be issued yearly to any junior (13-17) enrolled in school. A junior license holder will be entered into the appropriate class at age 18.
 - 3) Nonresident Commercial Shellfish License: The license is available to nonresidents of this municipality and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality.
 - 4) Junior Nonresident Commercial Shellfish License: The license is available to junior nonresidents and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality and reciprocating municipalities. Junior licenses will be issued yearly to any junior (13-17) enrolled in school. A junior license holder will be entered into the appropriate class at age 18.
 - 5) Resident Recreational Shellfish License: The license is available to residents and real estate taxpayers of this municipality and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use of himself and his family.
 - 6) Nonresident Recreational Shellfish License: The license is available to any person not a resident of this municipality and entitles the holder to

dig and take not more than one peck of shellfish in any one day for the use of himself and his family.

- 7) License must be signed: The licensee must sign the license to make it valid.

B. Application Procedure: Any person may apply to the Town Clerk for the licenses required by this ordinance on forms provided by the municipality.

- 1) Contents of Application: The application must be in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, signature and whatever information the municipality may require.
- 2) Misrepresentation: Any person who gives false information on a license application will cause said license to become invalid and void.

C. Fees: Fees for licenses will be recommended by the Shellfish Conservation Committee prior to January 1 of each year and approved by the Selectmen. The fees for the licenses must accompany in full the application for the respective license. Fees received for shellfish licensing shall be used by the town for shellfish management, conservation and enforcement.

D. Limitation of Diggers: If, following the annual review of the town's clam resources (size, distribution, abundance and the warden's reports, as required by Section 3), the Shellfish Conservation Committee in consultation with the DMR area biologist determine that limiting commercial or recreational shellfish licenses is an appropriate shellfish management option for the following year, then:

- 1) Prior to January 1st the committee shall report its findings and document recommendations for the allocation of commercial and recreational licenses to be made available for the following license-year to the Commissioner of Marine Resources for concurrence.
- 2) After receiving approval of proposed license allocations from the Commissioner of Marine Resources and prior to February 1st, the Shellfish Conservation Committee shall notify the Town Clerk in writing of the number and allocation of shellfish licenses to be issued.
- 3) Notice of the number of licenses to be issued and the procedure for application shall be published in a trade or industry publication, or in a newspaper or combination of newspapers with general circulation, which the Selectmen consider effective in reaching persons affected, not less than 10 days prior to the period of issuance and shall be posted in the municipal offices until the period concludes.
- 4) The Town Clerk shall issue licenses to residents and nonresidents as allocated from March 1st and until May 31st after which licenses shall be without regard to residency on a first-come, first-served basis or by lottery.
- 5) Licenses may be returned to the town voluntarily and may be reissued to another person at the current fee according to the priorities established in this section.
- 6) It is unlawful for any person to dig or take shellfish from the shores and flats between the hours of ½ hour after sunset and ½ hour before sunrise.

- E. Open License Sales: When the Shellfish Conservation Committee determines limiting shellfish licenses is not an appropriate shellfish management option for one or more license categories for the following year:
- 1) Notice of the dates, places, times and the procedures for the license sales shall be published in a trade or industry publication, or in a newspaper or combination of newspapers with general circulation, which the Selectmen consider effective in reaching persons affected, not less than 30 days prior to the initial sale date and shall be posted in the municipal offices. A copy of the notice shall be provided to Commissioner of Marine Resources.
 - 2) For each commercial license category, the Town Clerk shall issue one license to nonresidents when six licenses are issued to residents and one more to nonresidents when four more are issued to residents; thereafter, one nonresident license will be issued for every ten additional resident licenses issued. For each recreational license category, the Town Clerk shall issue one license to a resident and one to a nonresident; thereafter one nonresident license will be issued for every ten additional resident licenses issued.
- F. Conservation Time Requirements: An individual between the ages of 18-64 years applying for a Resident Commercial or Nonresident Commercial license for the first time shall agree to perform a minimum of seven (7) hours of mandatory conservation work in the first 180 days of the license term; and to renew his or her license shall have performed a minimum of seven (7) hours of mandatory conservation work in the twelve (12) months preceding the license renewal. Conservation requirements will be waived for all seniors 65 and older at time of licensing.
- Mandatory conservation work includes conservation work done on the flats and approved by the Shellfish Conservation Committee. It is the responsibility of the Commercial License applicant to contact a Committee member or the Shellfish Warden to schedule conservation activities. A receipt will be issued to record the date, type of activity, number of hours credited, and total hours to date.
- A list of scheduled conservation activities approved by the Shellfish Conservation Committee for the current licensing year within the municipality will be posted at the municipal offices.
- G. Seniority: When the Shellfish Conservation Committee decides that the number of licenses must be reduced, licenses will be issued to eligible individuals on the basis of seniority; individuals holding a municipal license of the same category for a greater number of consecutive years will receive a license before those who have less.
- H. License Expiration Date: Each license issued under authority of this ordinance expires at midnight on last day of February next following date of issuance.
- I. Reciprocal Harvesting Privileges: Licenses from any other municipality cooperating with this municipality on a joint shellfish management program may harvest shellfish according to the terms of this license.

- J. Fee Waivers: Recreational shellfish license fees will be waived for individuals 65 years or older and 12 years or younger.
- K. Suspension and Revocation: Any shellfish licensee having two convictions for a violation of this ordinance within a one-year period shall have his shellfish license automatically suspended for a period of thirty (30) days; any shellfish licensee having three convictions for a violation of this ordinance within a one-year period shall have his license revoked.
- 1) A licensee whose shellfish license has been revoked pursuant to this ordinance will lose all seniority rights and may apply for a new license only after one year from the date of revocation.
 - 2) The suspension and the revocation shall be effective from the date of mailing of a Notice of Suspension by the Town Clerk to the Licensee or from the date of denial of any appeal.
 - 3) Any licensee whose shellfish license has been suspended or revoked pursuant to this section shall be entitled to a hearing before the Shellfish Conservation Committee upon the filing of a written Request for Hearing with the Town Clerk within thirty (30) days following the effective date of suspension. The licensee may appeal the decision of the Shellfish Conservation Committee before the Board of Selectmen by filing a written Request for Appeal with the Town Clerk within seven (7) days of the decision of the Shellfish Conservation Committee.
6. **OPENING AND CLOSING OF FLATS:** The Board of Selectmen, upon the recommendation of the Shellfish Conservation Committee and with the approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvest. Upon concurrence of the Department of Marine Resources Area Biologist that the status of shellfish resource and other factors bearing on sound management indicate that an area should be opened or closed, the Board of Selectmen may call a public hearing and shall send a copy of the notice to the Department of Marine Resources. The decision of the Board of Selectmen made after the hearing shall be based on findings of fact.
7. **MINIMUM LEGAL SIZE OF SOFT SHELL CLAMS:** It is unlawful for any person to possess soft shell clams within the municipality which are less than two (2) inches in the longest diameter except as provided by Subsection B of this section.
- A. Definitions:
- 1) Lot: The word "lot" as used in this ordinance means the total number of soft shell clams in any bulk pile. Where soft shell clams are in a box, barrel, or other container, the contents of each box, barrel, or other container constitutes a separate lot.
 - 2) Possess: For the purpose of this section, "possess" means dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft shell clam shell stock.
- B. Tolerance: Any person may possess soft shell clams that are less than two inches if they comprise less than 10% of any lot. The tolerance shall be determined by count of not less than one peck nor more than four pecks

taken at random from various parts of the lot or by a count of the entire lot if it contains less than one peck.

- C. Penalty: Whoever violates any provision of this section shall be punished as provided by 12 MRSA Sec. 6681.
8. PENALTY: A person who violates this ordinance shall be punished as provided by 12 MRSA Sec. 6671(10).
9. EFFECTIVE DATE: This ordinance, which has been approved by the Commissioner of Marine Resources, shall become effective after its adoption by the municipality provided a certified copy of the ordinance is filed with the Commissioner within twenty (20) days of its adoption.
10. SEPARABILITY: If any section, subsection, sentence or part of this ordinance is for any reason held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining portions of this ordinance.
11. REPEAL: Any ordinance regulating the harvesting or conservation of shellfish in the town and any provisions of any other town ordinance, which is inconsistent with this ordinance, is hereby repealed.

* * *

SHORELAND ENVIROMENTAL PROTECTION ORDINANCE

FOR THE

TOWN OF BROOKSVILLE, MAINE

ADOPTED:

December 8, 2016

Date

CERTIFIED BY:

RB

Signature

Amber Bakeman

Printed Name

Town Clerk

Title

Affix Seal



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Section 1: PURPOSE

The purpose of this Ordinance is to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect commercial fishing and maritime industries; to protect freshwater and coastal wetlands; to control building sites, placement of structures and land uses; to conserve shore cover, and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.

Section 2: AUTHORITY AND SHORT TITLE

This Ordinance has been prepared in accordance with the provisions of Title 38 sections 435-449 of the Maine Revised Statutes Annotated (MRSA).

This Ordinance shall be known and may be cited as the "Shoreland Environmental Protection Ordinance for the Town of Brooksville, ME", and will be referred to herein as this "Ordinance".

Section 3: APPLICABILITY

This Ordinance applies to all land areas within 250 feet, horizontal distance, of the

- normal high-water line of any great pond, including Walkers Pond, Parker Pond and Snake Pond,
- normal high-water line of any river,
- upland edge of a coastal wetland, including all areas affected by tidal action,
- upland edge of a freshwater wetland,

and all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream.

Areas include, but are not limited to, all the tidal portions of the Bagaduce River, all lands held by the State in the Holbrook Wildlife Sanctuary, and all inland and coastal wetlands as shown on the Official Shoreland Zoning Map.

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

Section 4: EFFECTIVE DATE OF ORDINANCE AND ORDINANCE AMENDMENTS

This Ordinance, which was adopted by the voters of Brooksville at Town Meeting on December 8, 2016, shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. A certified copy of the Ordinance, attested and signed by the Town Clerk, shall be forwarded to the Commissioner for approval. If the Commissioner fails to act on this Ordinance within forty-five (45) days of its receipt of the Ordinance, it shall be automatically approved.

Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of this Ordinance, if the Ordinance is approved by the Commissioner.

Section 5: AVAILABILITY

A certified copy of this Ordinance shall be filed with the Town Clerk and shall be accessible to any member of the public. Copies shall be made available to the public at reasonable cost at the expense of the person making the request. Notice of availability of this Ordinance shall be posted.

Section 6: SEVERABILITY

If any article, section, paragraph, sentence, phrase or part hereof is declared by the courts to be invalid, such decision shall not invalidate any other section or provisions of the Ordinance.

Section 7: CONFLICT WITH OTHER ORDINANCES

Whenever a provision of this Ordinance conflicts with or is inconsistent with any other ordinance, regulation or statute administered by the town, the more restrictive provision shall control.

Section 8: AMENDMENTS

This Ordinance may be amended by majority vote of the citizens of Brooksville at a Regular or Special Town Meeting. Copies of amendments, attested and signed by the Town Clerk, shall be submitted to the Commissioner of the Department of Environmental Protection following adoption by the municipal legislative body and shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. If the Commissioner of the Department of Environmental Protection fails to act on any amendment within forty-five (45) days of receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of the amendment, if such amendment is approved by the Commissioner.

Section 9: DISTRICTS AND ZONING MAP

A. Official Shoreland Zoning Map

The areas to which this Ordinance is applicable are hereby divided into the following districts as shown on the Official Shoreland Zoning Map which is made a part of this Ordinance:

1. Resource Protection
2. Limited Residential/Commercial
3. Commercial Fisheries/Maritime Activities
4. Stream Protection

B. Scale of Map

The Official Shoreland Zoning Map shall be drawn at a scale of: 1 inch = 1000 feet. District boundaries shall be clearly delineated and a legend indicating the symbols for each district shall be placed on the map.

C. Certification of Official Shoreland Zoning Map

The Official Shoreland Zoning Map shall be certified by the attested signature of the Town Clerk and shall be located in the municipal office.

D. Changes to the Official Shoreland Zoning Map

If amendments, in accordance with Section 8, are made in the district boundaries or other matter portrayed on the Official Shoreland Zoning Map, such changes shall be made on the Official Shoreland Zoning Map within thirty (30) days after the amendment has been approved by the Commissioner of the Department of Environmental Protection.

Section 10: INTERPRETATION OF DISTRICT BOUNDARIES

Unless otherwise set forth on the Official Shoreland Zoning Map, district boundary lines are property lines, the centerlines of streets, roads and rights of way, and the boundaries of the shoreland area as defined herein. Where uncertainty exists as to the exact

location of district boundary lines, the Board of Appeals shall be the final authority as to location.

Section 11: LAND USE REQUIREMENTS

Except as hereinafter specified, no building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, expanded, moved, or altered and no new lot shall be created except in conformity with all of the regulations herein specified for the district in which it is located, unless a variance is granted by the Brooksville Board of Appeals.

Section 12: NON-CONFORMANCE

A. Purpose

It is the intent of this Ordinance to promote land use conformities, except that non-conforming conditions that existed before the effective date of this Ordinance or amendments thereto shall be allowed to continue, subject to the requirements set forth in Section 12. Except as otherwise provided in this Ordinance, a non-conforming condition shall not be permitted to become more non-conforming.

B. General

1. Transfer of Ownership

Non-conforming structures, lots, and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this Ordinance.

2. Repair and Maintenance

This Ordinance allows, without a permit, the normal and reasonable upkeep and maintenance of non-conforming uses and structures including repairs or renovations which do not involve expansion of the non-conforming use or structure, and such other changes in a non-conforming use or structure as federal, state, or local building and safety codes may require.

C. Non-conforming Structures

1. Expansions:

All new principal and accessory structures, excluding functionally water-dependent uses, must meet the water body, tributary stream, or wetland setback requirements contained in Section 15(B)(1). A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure; and as long as the proposed enlargement or expansion conforms to the requirements of this ordinance (subparagraphs (a) and (b) below).

- (a) Expansion of any portion of a structure within 25 feet of the normal high-water line of a water body, tributary stream, or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or wetland setback requirement. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream, or wetland setback requirement.

- (b) Notwithstanding paragraph (a) above, if a legally existing non-conforming principal structure is entirely located less than 25 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, that structure may be expanded as follows, as long as all other applicable municipal land use standards are met and the expansion is not prohibited by Section 12(C)(1):
- (i) The maximum total footprint for the principal structure may not be expanded to a size greater than 800 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of the principal structure may not be made greater than 15 feet or the height of the existing structure, whichever is greater.
- (c) All other legally existing non-conforming principal and accessory structures that do not meet the water body, tributary stream, or wetland setback requirements may be expanded or altered as follows, as long as other applicable municipal land use standards are met and the expansion is not prohibited by Section 12(C)(1) or Section 12(C)(1)(a), above.
- (i) For structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,000 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 20 feet or the height of the existing structure, whichever is greater.
 - (ii) For structures located less than 100 feet from the normal high-water line of a great pond classified as GPA or a river flowing to a great pond classified as GPA, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater. Any portion of those structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in Section 12(C)(1)(b)(i) and Section 12(C)(1)(c)(i), above.
 - (iii) In addition to the limitations in subparagraphs (i) and (ii), for structures that are legally non-conforming due to their location within the Resource Protection District when located at less than 250 feet from the normal high-water line of a water body or the

upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed at the time the Resource Protection District was established on the lot, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in Section 12(C)(1)(b)(i) and Section 12(C)(1)(c)(i), above.

- (d) An approved plan for expansion of a non-conforming structure must be recorded by the applicant with the registry of deeds within 90 days of approval. The recorded plan must show the existing and proposed footprint of the non-conforming structure, the existing and proposed structure height, the footprint of any other structures on the parcel, the shoreland zone boundary and evidence of approval by the municipal review authority.

2. Foundations

Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Section 12(C)(3) Relocation, below.

3. Relocation

A non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board or its designee, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules (Rules), or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming.

In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board or its designee shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation in accordance with Section 15(S). In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

- (a) Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.

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

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

4. Reconstruction or Replacement

Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or upland edge of a wetland and which is removed, or damaged or destroyed, regardless of cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board or designee in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section 12(C)(1) above, as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove

vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 12(C)(3) above.

Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by 50% or less of the market value, or damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained from the code enforcement officer within one year of such damage, destruction or removal.

In determining whether the building reconstruction or replacement meets the setback to the greatest practical extent the Planning Board or its designee shall consider in addition to the criteria in Section 12(C)3 above, the physical condition and type of foundation present, if any.

5. Change of Use of a Non-conforming Structure

The use of a non-conforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater adverse impact on the water body, tributary stream or wetland, or on the subject or adjacent properties and resources than the existing use.

In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, flood plain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water dependent uses.

D. Non-conforming Use

1. Expansions

Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as allowed in Section 12(C)(1) above.

2. Resumption Prohibited

A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding five (5) year period.

3. Change of Use

An existing non-conforming use may be changed to another non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources, including water dependent uses in the CFMA district, than the former use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in Section 12 (C)(5) above.

E. Non-conforming Lots

1. Non-conforming Lots

A non-conforming lot of record as of the effective date of this Ordinance or amendment thereto may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot area, lot width and shore frontage can be met. Variances relating to setback or other requirements not involving lot area, lot width or shore frontage shall be obtained by action of the Board of Appeals.

2. Contiguous Built Lots

If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 MRSA sections 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.

If two or more principal uses or structures existed on a single lot of record on the effective date of this Ordinance, each may be sold on a separate lot provided that the above referenced law and rules are complied with. When such lots are divided each lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance.

3. Contiguous Lots-Vacant or Partially Built

If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this Ordinance, if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure the lots shall be combined to the extent necessary to meet the dimensional requirements.

Section 13: ESTABLISHMENT OF DISTRICTS

A. Stream Protection District

The Stream Protection District includes all land areas within seventy five (75) feet, horizontal distance, of the normal high water line of a stream, exclusive of those areas within two hundred and fifty (250) feet, horizontal distance, of the normal high water line of a great pond, or river or within two hundred and fifty (250) feet, horizontal distance, of the upland edge of a freshwater or coastal wetland. Where a stream and its associated shoreland area is located within two hundred and fifty (250) feet, horizontal distance, of the above water bodies or wetlands, that land area shall be regulated under the terms of the shoreland district associated with that water body or wetland.

B. Resource Protection District

The Resource Protection District includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This district shall include the following areas when they occur within the limits of the shoreland zone, exclusive of the Stream Protection District, except that areas which are currently developed and areas which meet the criteria for the Limited Residential/Commercial, or Commercial Fisheries/Maritime Activities Districts need not be included within the Resource Protection District.

1. Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes and salt meadows, and wetlands associated with great ponds classified GPA 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 a Geographic Information System (GIS) data layer maintained by either MDIF&W or the Department. Moderate and high value freshwater wetlands are identified as of December 31, 2008. 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.

NOTE: The Natural Resources Protection Act, 38 MRSA sections 480 A thru 480 Z, requires the Department of Environmental Protection to designate areas of "significant wildlife habitat". Significant wildlife habitat includes:

Habitat for species appearing on the official state or federal lists of endangered or threatened species; high and moderate value deer wintering areas and travel corridors as defined by the Department of Inland Fisheries and Wildlife; high and moderate value waterfowl and wading bird habitats, including nesting and feeding areas as defined by the Department of Inland Fisheries and Wildlife; critical spawning and nursery areas for Atlantic sea run salmon as defined by the Atlantic Sea Run Salmon Commission; and shorebird nesting, feeding and staging areas and seabird nesting islands as defined by the Department of Inland Fisheries and Wildlife.

2. Floodplains along rivers and floodplains along artificially formed great ponds classified GPA 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 20% or greater.
4. Areas of two (2) or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater or coastal wetland as defined, and which are not surficially connected to a water body during the period of normal high water.
5. Land areas along rivers 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. Limited Residential/Commercial District

The Limited Residential/Commercial District includes those areas suitable for residential and recreational and light commercial development. It includes areas other than those in the Resource Protection District, or Stream Protection District, and areas which are used less intensively than those in the Commercial Fisheries/Maritime Activities District

D. Commercial Fisheries/Maritime Activities District

The Commercial Fisheries/ Maritime Activities District includes areas where the existing predominant pattern of development is consistent with the allowed uses for this district as indicated in the Table of Land Uses and other areas which are suitable for functionally water dependent uses, taking into consideration such factors as:

1. Shelter from prevailing winds and waves;
2. Slope of the land within 250 feet, horizontal distance, of the shoreline;
3. Depth of the water within 150 feet, horizontal distance, of the shoreline;
4. Available support facilities including utilities and transportation facilities; and
5. Compatibility with adjacent upland uses.

Section 14: TABLE OF LAND USES

All land use activities, as indicated in Table 1, Land Uses in the Shoreland Zone, shall conform with all of the applicable land use standards in Section 15. The district designation for a particular site shall be determined from the Official Shoreland Zoning Map.

Key to Table 1:

Yes - Allowed (no permit required but the use must comply with all applicable land use standards)

No - Prohibited

PB - Allowed with permit issued by the Planning Board

CEO - Allowed with permit issued by the Code Enforcement Officer

LPI - Allowed with permit issued by the Local Plumbing Inspector

Abbreviations:

RP - Resource Protection

LRC - Limited Residential/Commercial

CFMA - Commercial Fisheries/Maritime Activities

SP - Stream Protection

NOTE: The term "functionally water dependent use" as defined, includes a very diverse group of uses ranging from large, industrial facilities that receive shipments by water or use water for cooling, to traditional commercial fishing enterprises, and public shorefront parks.

TABLE 1. LAND USES IN THE SHORELAND ZONE

Land Uses		Districts:	SP	RP	LRC	CFMA
1.	Non-intensive recreational uses not requiring structures such as hunting, fishing and hiking		Yes	Yes	Yes	Yes
2.	Motorized vehicular traffic on existing roads and trails		Yes	Yes	Yes	Yes
3.	REPEALED					
4.	REPEALED					
5.	Clearing of vegetation for activities other than timber harvesting		CEO	CEO ¹	Yes	Yes
6.	Fire prevention activities		Yes	Yes	Yes	Yes
7.	Wildlife management practices		Yes	Yes	Yes	Yes
8.	Soil and water conservation practices		Yes	Yes	Yes	Yes
9.	Mineral exploration		No	Yes ²	Yes ²	Yes ²
10.	Mineral extraction including sand and gravel extraction		No	PB ³	PB	PB
11.	Surveying and resource analysis		Yes	Yes	Yes	Yes
12.	Emergency operations		Yes	Yes	Yes	Yes
13.	Agriculture		Yes	PB	Yes	Yes
14.	Aquaculture		PB	PB	PB	Yes
15.	Principal structures and uses					
	A. One and two family residential, including driveways		PB ⁴	PB ¹⁰	PB	No
	B. Multi-unit residential		No	No	PB	No
	C. Commercial		No ⁶	No ⁶	No ⁶	PB ⁵
	D. Industrial		No	No	No	PB ⁵
	E. Governmental and institutional		No	No	No	PB ⁵
	F. Small non-residential facilities for educational, scientific, or nature interpretation purposes		PB ⁴	PB	PB	PB ⁵

16.	Structures accessory to allowed uses	PB ⁴	PB	CEO	Yes
17.	Piers, docks, wharfs, bridges and other structures and uses extending over or below the normal high-water line or within a wetland				
	A. Temporary	CEO ⁷	CEO ⁷	CEO ⁷	CEO ⁷
	B. Permanent	PB	PB	PB	PB ⁵
18.	Conversions of seasonal residences to year-round residences	LPI	No	LPI	No
19.	Home Occupations	PB	PB	PB	Yes
20.	Private sewage disposal systems for allowed uses	LPI	LPI	LPI	LPI
21.	Essential services				
	A. Roadside distribution lines (34.5kV and lower)	CEO ¹¹	CEO ¹¹	Yes ¹²	Yes ¹²
	B. Non-roadside or cross-country distribution lines involving ten poles or less in the shoreland zone	PB ¹¹	PB ¹¹	CEO	CEO
	C. Non-roadside or cross-country distribution lines involving eleven or more poles in the shoreland zone	PB ¹¹	PB ¹¹	PB	PB
	D. Other essential services	PB ¹¹	PB ¹¹	PB	PB
22.	Service drops, as defined, to allowed uses	Yes	Yes	Yes	Yes
23.	Public and private recreational areas involving minimal structural development				
24.	Individual, private campsites	PB	PB	PB	CEO ⁵
25.	Campgrounds	CEO	CEO	CEO	CEO
26.	Road construction	No	No ⁸	PB	No
27.	REPEALED	PB	No ⁹	PB	PB ⁵
28.	Parking facilities	Yes	PB ¹³	Yes	Yes
29.	Marinas	No	No ⁸	PB	PB ⁵
30.	Filling and earthmoving of <10 cubic yards	PB	No	PB	PB
31.	Filling and earthmoving of >10 cubic yards	CEO	CEO	Yes	Yes
32.	Signs	PB	PB	CEO	CEO
33.	Uses similar to allowed uses	Yes	Yes	Yes	Yes
34.	Uses similar to uses requiring CEO permit	CEO	CEO	CEO	CEO
35.	Uses similar to uses requiring a PB permit	CEO	CEO	CEO	CEO
¹	In RP not allowed within 75 feet horizontal distance of the normal high-water line of great ponds classified GPA, except to remove safety hazards.	PB	PB	PB	PB
²	Requires permit from the Code Enforcement Officer if more than 100 square feet of surface area, in total, is disturbed.				
³	In RP not allowed in areas so designated because of wildlife value.				
⁴	Provided that a variance from the setback requirement is obtained from the Board of Appeals.				
⁵	Functionally water-dependent uses and uses accessory to such water dependent uses only (See note on the previous page).				
⁶	Except for commercial uses otherwise listed in this Table, such as marinas and campgrounds, that are allowed in the respective district.				
⁷	Excluding bridges and other crossings not involving earthwork, in which case no permit is required.				
⁸	Except when area is zoned for resource protection due to floodplain criteria in which case a permit is required from the PB.				
⁹	Except as provided in Section 15(H)(3).				
¹⁰	Single family residential structures may be allowed by special exception only according to the provisions of Section 16E, Special Exceptions. Two-family residential structures are prohibited.				
¹¹	See further restrictions in Section 15(L)(2)				
¹²	Permit not required, but must file a written "notice of intent to construct" with CEO.				
¹³	Option 3 towns only.				

NOTE: A person performing any of the following activities shall require a permit from the Department of Environmental Protection, pursuant to Title 38 MRSA, section 480-C, if the activity occurs in, on, over or adjacent to any freshwater or coastal wetland, great pond, river, stream or brook and operates in such a manner that material or soil may be washed into them:

1. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;
2. Draining or otherwise dewatering;
3. Filling, including adding sand or other material to a sand dune; or
4. Any construction or alteration of any permanent structure.

Section 15: LAND USE STANDARDS

All land use activities within the shoreland zone shall conform with the following provisions, if applicable:

A. Minimum Lot Standards

1. Lot Standards Table:

Key to Table:

COM – Commercial Uses per Principal Structure

N/A – Not Applicable

RES – Residential Uses per Dwelling Unit

Lot Standard		Stream Protection	Resource Protection	Limited Residential Commercial		CF/MA
		RES	RES	RES	COM	COM
Minimum Lot Size/ Square Feet	Tidal	30,000	30,000	30,000	40,000	NONE
	Non-Tidal	40,000	40,000	40,000	60,000	N/A
Minimum Shore Frt on/Linear Feet	Tidal	150	150	150	200	NONE
	Non-Tidal	200	200	200	300	N/A
Minimum Shore Setback/Linear Feet	Tidal	75	250 ⁴	75	75	NONE
	Non-Tidal	75	250 ⁴	100(4)	100(4)	N/A
Minimum Side Setback/Linear Feet	Tidal	15	15	15	15	15
	Non-Tidal	15	15	15	15	15
Minimum Road Setback/Linear Feet ***3	Tidal	15	NO	15	15	15
	Non-Tidal	15	NO	15	15	15
Maximum % Lot Coverage	Tidal	20	20	20	20	70
	Non-Tidal	20	20	20	20	N/A
Maximum Structure Height Linear Feet **2	Tidal	35	35	35	35	NONE
	Non-Tidal	35	35	35	35	N/A
<p>*1 Lot coverage includes all non-vegetated surfaces, including but not limited to: structures, driveways, roads, and developed areas. Section 15.B.4.</p> <p>**2 Does not include towers, chimneys, antennas, windmills, and similar structures with no floor area. Section 15.B.2. See Section 15.C.8 for further restrictions.</p> <p>***3 Structure setbacks will be one half the width of the right of way plus 15' measured from the centerline of the right of way.</p> <p>⁴ See setback standards in Section 15.B.1</p>						

- Land below the normal high water line of a water body or upland edge of a wetland and land beneath roads serving more than two (2) lots shall not be included toward calculating minimum lot area.
- Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.

4. The minimum width of any portion of any lot within one hundred (100) feet, horizontal distance, of the normal high water line of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.
5. If more than one residential dwelling unit and one principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure or use.

B. Principal and Accessory Structures

1. All new principal and accessory structures shall be set back at least one hundred (100) feet, horizontal distance, from the normal high water line of great ponds classified GPA and rivers that flow to great ponds classified GPA, and seventy five (75) feet, horizontal distance, from the normal high water line of other water bodies, tributary streams, or the upland edge of a wetland. In the Commercial Fisheries/Maritime Activities District there shall be no minimum setback. In the Resource Protection District the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified above shall apply. In addition:
 - (a) The water body, tributary stream or wetland setback provision shall neither apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water dependent uses.
 - (b) For principal structures, water and wetland setback measurements shall be taken from the top of a coastal bluff that has been identified on Coastal Bluff maps as being “highly unstable” or “unstable” by the Maine Geological Survey pursuant to its “Classification of Coastal Bluffs” and published on the most recent Coastal Bluff map. If the applicant and the permitting official(s) are in disagreement as to the specific location of a “highly unstable” or “unstable” bluff, or where the top of the bluff is located, the applicant may at his or her expense, employ a Maine Registered Professional Engineer, a Maine Certified Soil Scientist, a Maine State Geologist, or other qualified individual to make a determination. If agreement is still not reached, the applicant may appeal the matter to the board of appeals.
 - (c) On a non-conforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the code enforcement officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar

equipment. Such accessory structure shall not exceed eighty (80) square feet in area nor eight (8) feet in height, and shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.

2. Principal or accessory structures and expansions of existing structures which are permitted in the Resource Protection, Limited Residential/Commercial, and Stream Protection Districts, shall not exceed thirty five (35) feet in height. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.
3. The lowest floor elevation or openings of all buildings and structures including basements shall be elevated at least two (2) feet above the elevation of the 100-year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent floodplain soils.
4. With the exception of General Development Districts located adjacent to coastal wetlands and rivers that do not flow to great ponds, and Commercial Fisheries/Maritime Activities Districts, non-vegetated surfaces shall not exceed a total of twenty (20) percent of the portion of the lot located within the shoreland zone. This limitation does not apply to public boat launching facilities regardless of the district in which the facility is located.

In a General Development District located adjacent to coastal wetlands, or rivers that do not flow to great ponds, or in a Commercial Fisheries/Maritime Activities District, non-vegetated surfaces shall not exceed a total of seventy (70) percent of the portion of the lot located within the shoreland zone.

For the purposes of calculating lot coverage, non-vegetated surfaces include, but are not limited to the following: structures, driveways, parking areas, and other areas from which vegetation has been removed. Naturally occurring ledge and rock outcroppings are not counted as non-vegetated surfaces when calculating lot coverage for lots of record on March 24, 1990 and in continuous existence since that date.

5. Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:
 - (a) The site has been previously altered and an effective vegetated buffer does not exist;

- (b) The wall(s) is (are) at least 25 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;
- (c) The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;
- (d) The total height of the wall(s), in the aggregate, is no more than 24 inches;
- (e) Retaining walls are located outside of the 100-year floodplain on rivers, streams, coastal wetlands, and tributary streams, 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.
- (f) The area behind the wall is re-vegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and
- (g) A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:
 - (i) The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;
 - (ii) Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of storm water runoff;
 - (iii) Only native species may be used to establish the buffer area;
 - (iv) A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;
 - (v) A footpath not to exceed the standards in Section 15(P)(2)(a) may traverse the buffer;

NOTE: If the wall and associated soil disturbance occurs within 75 feet, horizontal distance, of a water body, tributary stream or coastal wetland, a permit pursuant to the Natural Resource Protection Act is required from the Department of Environmental Protection.

6. Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided; that the structure is limited to a maximum of four (4) feet in width; that the structure does not extend below or over the normal high water line of a water body or upland edge of a wetland, (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38, MRSA section 480 C); and that the applicant demonstrates that no reasonable access alternative exists on the property.

C. Piers, Docks, Wharfs, Bridges and Other Structures and Uses Extending Over or Below the Normal High Water Line of a Water Body or Within a Wetland

1. No more than one pier, dock, wharf or similar structure extending or located below the normal high-water line of a water body or within a wetland is allowed on a single lot; except that when a single lot contains at least twice the minimum shore frontage as specified in Section 15(A), a second structure may be allowed and may remain as long as the lot is not further divided.
2. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
3. The location shall not interfere with existing developed or natural beach areas.
4. The facility shall be located so as to minimize adverse effects on fisheries.
5. The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with surrounding character and uses of the area. A temporary pier, dock or wharf in non-tidal waters shall not be wider than six feet for non-commercial uses.
6. No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending below the normal high water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity.
7. New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.
8. No existing structures built on, over or abutting a pier, dock, wharf or other structure extending below the normal high water line of a water body or within a wetland shall be converted to residential dwelling units in any district.
9. Except in the Commercial Fisheries/Maritime Activities District, structures built on, over or abutting a pier, wharf, dock or other structure extending below the

normal high water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.

10. Vegetation may be removed in excess of the standards in Section 15(P) of this ordinance in order to conduct shoreline stabilization of an eroding shoreline, provided that a permit is obtained from the Planning Board. Construction equipment must access the shoreline by barge when feasible as determined by the Planning Board.

- (a) When necessary, the removal of trees and other vegetation to allow for construction equipment access to the stabilization site via land must be limited to no more than 12 feet in width. When the stabilization project is complete the construction equipment access way must be restored.

- (b) Revegetation must occur in accordance with Section 15(S).

NOTE: A permit pursuant to the Natural Resource Protection Act is required from the Department of Environmental Protection for Shoreline Stabilization activities.

NOTE: New permanent structures, and expansions thereof, projecting into or over water bodies shall require a permit from the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 MRSA section 480-C. Permits may also be required from the Army Corps of Engineers if located in navigable waters.

D. Campgrounds

Campgrounds shall conform to the minimum requirements imposed under State licensing procedures and the following:

1. Campgrounds shall contain a minimum of five thousand (5,000) square feet of land, not including roads and driveways, for each site. Land supporting wetland vegetation, and land below the normal high water line of a water body shall not be included in calculating land area per site.
2. The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of one hundred (100) feet, horizontal distance, from the normal high water line of a great pond or a river flowing to a great pond, and seventy five (75) feet, horizontal distance, from the normal high water line of other water bodies, tributary streams, or the upland edge of a wetland.

E. Individual Private Campsites

Individual private campsites not associated with campgrounds are allowed provided the following conditions are met:

1. One campsite per lot existing on the effective date of this Ordinance, or thirty thousand (30,000) square feet of lot area within the shoreland zone, whichever is less, may be permitted.
2. When an individual private campsite is proposed on a lot that contains another principal use and/or structure, the lot must contain the minimum lot dimensional requirements for the principal structure and/or use, and the individual private campsite separately.
3. Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back one hundred (100) feet, horizontal distance, from the normal high water line of a great pond or river flowing to a great pond, and seventy five (75) feet, horizontal distance, from the normal high water line of other water bodies, tributary streams, or the upland edge of a wetland.
4. Only one recreational vehicle shall be allowed on a campsite. The recreational vehicle shall not be located on any type of permanent foundation except for a gravel pad, and no structure(s) except a canopy shall be attached to the recreational vehicle.
5. The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a Resource Protection District shall be limited to one thousand (1,000) square feet.
6. A written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the Local Plumbing Inspector. Where disposal is off site, written authorization from the receiving facility or land owner is required.
7. When a recreational vehicle, tent or similar shelter is placed on site for more than one hundred and twenty (120) days per year, all requirements for residential structures shall be met, including the installation of a subsurface sewage disposal system in compliance with the State of Maine Subsurface Wastewater Disposal Rules unless served by public sewage facilities.

F. Commercial and Industrial Uses

The following new commercial and industrial uses are prohibited within the shoreland zone adjacent to great ponds classified GPA, and rivers and streams which flow to great ponds classified GPA:

1. Auto washing facilities
2. Auto or other vehicle service and/or repair operations, including body shops
3. Chemical and bacteriological laboratories
4. Storage of chemicals, including herbicides, pesticides or fertilizers other than amounts normally associated with individual households or farms
5. Commercial painting, wood preserving, and furniture stripping
6. Dry cleaning establishments
7. Electronic circuit assembly
8. Laundromats, unless connected to a sanitary sewer
9. Metal plating, finishing, or polishing
10. Petroleum or petroleum product storage and/or sale except storage on same property as use occurs and except for storage and sales associated with marinas
11. Photographic processing
12. Printing

G. Parking Areas

1. Parking areas shall meet the shoreline and tributary stream setback requirements for structures for the district in which such areas are located, except that in the Commercial Fisheries/Maritime Activities District parking areas shall be set back at least twenty five (25) feet, horizontal distance, from the shoreline. The setback requirement for parking areas serving public boat launching facilities, in Districts other than the Commercial Fisheries/Maritime Activities Districts shall be reduced to no less than fifty (50) feet, horizontal distance, from shoreline or tributary stream if the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream.

2. Parking areas shall be adequately sized for the proposed use and shall be designed to prevent stormwater runoff from flowing directly into a water body, tributary stream or wetland, and where feasible, to retain all runoff on site.
3. In determining the appropriate size of proposed parking facilities, the following shall apply:
 - (a) Typical parking space: Approximately ten (10) feet wide and twenty (20) feet long, except that parking spaces for a vehicle and boat trailer shall be forty (40) feet long.
 - (b) Internal travel aisles: Approximately twenty (20) feet wide.

H. Roads and Driveways

The following standards shall apply to the construction of roads and/or driveways and drainage systems, culverts and other related features.

1. Roads and driveways shall be set back at least one hundred (100) feet, horizontal distance, from the normal high water line of a great pond or a river that flows to a great pond, and seventy five (75) feet, horizontal distance, from the normal high water line of other water bodies, tributary streams, or the upland edge of a wetland unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the road and/or driveway setback requirement shall be no less than fifty (50) feet, horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream, or wetland.

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

Section 15(H)(1) does not apply to approaches to water crossings nor to roads or driveways that provide access to permitted structures, and facilities located nearer to the shoreline or tributary stream due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of Section 15(H)(1) except for that portion of the road or driveway necessary for direct access to the structure.

2. Existing public roads may be expanded within the legal road right of way regardless of its setback from a water body, tributary stream or wetland.
3. New roads and driveways are prohibited in a Resource Protection District except that the Planning Board may grant a permit to construct a road or

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

4. Road and driveway banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with the provisions of the erosion and sedimentation control section (Section 15(T)).
5. Road and driveway grades shall be no greater than ten (10) percent except for segments of less than two hundred (200) feet.
6. In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams and wetlands, roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least (50) feet plus two times the average slope, in width between the outflow point of the ditch or culvert and the normal high water line of a water body, tributary stream, or upland edge of a wetland. Surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.
7. Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow gains sufficient volume or head to erode the road, driveway or ditch. To accomplish this, the following shall apply:

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

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

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

- (c) On sections having slopes greater than ten (10) percent, ditch relief culverts shall be placed at approximately a thirty (30) degree angle downslope from a line perpendicular to the centerline of the road or driveway.
 - (d) Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning, and their inlet and outlet ends shall be stabilized with appropriate materials.
8. Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning.

I. Signs

The following provisions shall govern the use of signs in the Resource Protection, Stream Protection, and Limited Residential/Commercial Districts:

- 1. Signs relating to goods and services sold on the premises shall be allowed, provided that such signs shall not exceed six (6) square feet in area and shall not exceed two (2) signs per premises. Signs relating to goods or services not sold or rendered on the premises shall be prohibited.
- 2. Name signs are allowed, provided such signs shall not exceed two (2) signs per premises and shall not exceed twelve (12) square feet in the aggregate.
- 3. Residential users may display a single sign not over three (3) square feet in area relating to the sale, rental, or lease of the premises.
- 4. Signs relating to trespassing and hunting shall be allowed without restriction as to number provided that no such sign shall exceed two (2) square feet in area.
- 5. Signs relating to public safety shall be allowed without restriction.
- 6. No sign shall extend higher than twenty (20) feet above the ground.
- 7. Signs may be illuminated only by shielded, non-flashing lights.

J. Storm Water Runoff

1. All new construction and development shall be designed to minimize storm water runoff from the site in excess of the natural predevelopment conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas shall be retained in order to reduce runoff and encourage infiltration of storm waters.
2. Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.

K. Septic Waste Disposal

All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules, MRSA 30-A, Section 4211 and the following: a) clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than seventy-five (75) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland and b) a holding tank is not allowed for a first-time residential use in the shoreland zone.

NOTE: The Maine Subsurface Wastewater Disposal Rules require new systems, excluding fill extensions, to be constructed no less than one hundred (100) horizontal feet from the normal high-water line of a perennial water body. The minimum setback distance for a new subsurface disposal system may not be reduced by variance.

L. Essential Services

1. Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.
2. The installation of essential services, other than road-side distribution lines, is not allowed in a Resource Protection or Stream Protection District, except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. Where allowed, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.
3. Damaged or destroyed public utility distribution lines may be replaced or reconstructed without a permit.

M. Mineral Exploration and Extraction

Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than one hundred (100) square feet of ground surface. A permit from the Code Enforcement Officer shall be required for mineral exploration which exceeds the above limitation. All excavations, including test pits and holes shall be

immediately capped, filled or secured by other equally effective measures, to restore disturbed areas and to protect the public health and safety.

Mineral extraction may be permitted under the following conditions:

1. A reclamation plan shall be filed with and approved by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of Section 15 (M) (3) below.
2. No part of any extraction operation, including drainage and runoff control features shall be permitted within one hundred (100) feet, horizontal distance, of the normal high water line of a great pond or river flowing to a great pond, and within seventy five (75) feet, horizontal distance, of the normal high water line of any other water body, tributary stream, or the upland edge of a wetland. Extraction operations shall not be permitted within fifty (50) feet, horizontal distance, of any property line, without written permission of the owner of such adjacent property.
3. Within twelve (12) months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than one undred (100) cubic yards of materials are removed in any consecutive twelve (12) month period, ground levels and grades shall be established in accordance with the following:

- (a) All debris, stumps, and similar material shall be removed for disposal in an approved location, or shall be buried on site. Only materials generated on site may be buried or covered on site.

NOTE: The State of Maine Solid Waste Laws, 38 MRSA section 1301 and the solid waste management rules, Chapters 400-419 of the Department of Environmental Protection's regulations may contain other applicable provisions regarding disposal of such materials.

- (b) The final graded slope shall be two and one-half to one (2 1/2:1) slope or flatter.
 - (c) Top soil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off site sources if necessary to complete the stabilization project.

In keeping with the purposes of this Ordinance, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources

N. Agriculture

1. All spreading of manure shall be accomplished in conformance with the Manure Utilization Guidelines published by the former Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 MRSA sections 4201-4209).
2. Manure shall not be stored or stockpiled within one hundred (100) feet, horizontal distance, of a great pond or a river flowing to a great pond, or within seventy five (75) feet horizontal distance, of other water bodies, tributary streams, or wetlands. All manure storage areas within the shoreland zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water.
3. Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area, within the shoreland zone shall require a Conservation Plan to be filed with the Planning Board. Non-conformance with the provisions of said plan shall be considered to be a violation of this Ordinance.

NOTE: Assistance in preparing a Conservation Plan may be available through the local Soil and Water Conservation District office.

4. There shall be no new tilling of soil within one hundred (100) feet, horizontal distance, of the normal high water line of a great pond; within seventy five (75) feet, horizontal distance, from other water bodies and coastal wetlands; nor within twenty five (25) feet, horizontal distance, of tributary streams, and freshwater wetlands. Operations in existence on the effective date of this ordinance and not in conformance with this provision may be maintained.
5. Newly established livestock grazing areas shall not be permitted within one hundred (100) feet, horizontal distance, of the normal high water line of a great pond; within seventy five (75) feet, horizontal distance of other water bodies and coastal wetlands, nor; within twenty five (25) feet, horizontal distance, of tributary streams, and freshwater wetlands. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provisions, may continue, provided that such grazing is conducted in accordance with a Conservation Plan that has been filed with the Planning Board.

O. Timber Harvesting (Now Regulated by Maine Forest Service)

P. Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting

1. In a Resource Protection District abutting a great pond, there shall be no cutting of vegetation within the strip of land extending 75 feet, horizontal distance, inland from the normal high water line, except to remove hazard trees as described in section Q.

Elsewhere, in any Resource Protection District, the cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized in that district.

2. Except in areas as described in Section P(1), above, within a strip of land extending one hundred (100) feet, horizontal distance, inland from the normal high water line of a great pond or a river flowing to a great pond classified as GPA, or within a strip extending seventy-five (75) feet, horizontal distance, from any other water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:

- (a) There shall be no cleared opening greater than 250 square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree crown or shrub crown. However, a single footpath not to exceed six (6) feet in width as measured between tree trunks and/or shrub stems is allowed accessing the shoreline for provided that a cleared line of sight to water through the buffer strip is not created.
- (b) Selective cutting of trees within the buffer strip is allowed provided that a well distributed stand of trees and other natural vegetation is maintained. For the purposes of Section 15(P)(2)(b) a "well distributed stand of trees" adjacent to a great pond or a river or stream flowing to a great pond, shall be defined as maintaining a rating score of 12 or more in any 25 foot by 25 foot square (625 square feet) area as determined by the following rating system, which establishes only a "well-distributed stand of trees", not a well-distributed stand of trees and other vegetation. "Other vegetation" is described elsewhere.

Diameter of Tree at 4 ½ Feet Above Ground Level (inches) Points	
2 < 4 in.	1
4 < 12 in.	2
12 in. or greater	4

Adjacent to other water bodies, tributary streams, and wetlands, a "well distributed stand of trees and other vegetation" is defined as maintaining a minimum rating score of 8 per 25 x 25 foot square area.

Note: As an example, adjacent to a great pond, if a 25 foot x 25 foot plot contains three (3) trees between 2 and 4 inches in diameter, three trees between 4 and 12 inches in diameter, and three trees over 12 inches in diameter, the rating score is:

$$(3 \times 1) + (3 \times 2) + (3 \times 4) = 21 \text{ points}$$

Thus, the 25 foot x 25 foot plot contains trees worth 21 points. Trees totaling 9 points (21 - 12 = 9) may be removed from the plot provided that no cleared openings are created.

For the purposes of Section 15(P)(2)(b), "other natural vegetation" is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least three (3) saplings less than two (2) inches in diameter at four and one-half (4 ½) feet above ground level for each 25-foot by 25-foot rectangular area. If three (3) saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 3 saplings have been recruited into the plot.

Notwithstanding the above provisions, no more than 40% of the total volume of trees four (4) inches or more in diameter, measured at 4 1/2 feet above ground level may be removed in any ten (10) year period.

- (c) In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered or removed, except to provide for a footpath or other permitted uses as described in Section 15(P) paragraphs (2) and (2a) above.
- (d) Pruning of tree branches, on the bottom 1/3 of the tree is allowed.
- (e) In order to maintain a buffer strip of vegetation, when the removal of storm damaged, dead, or hazard trees results in the creation of cleared openings, these openings shall be replanted with native tree species in accordance with Section Q, below, unless existing new tree growth is present.
- (f) In order to maintain the vegetation in the shoreline buffer, clearing or removal of vegetation for allowed activities, including associated construction and related equipment operation, within or outside the shoreline buffer, must comply with the requirements of Section 15(P)(2).

Section 15(P)(2) does not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum area necessary.

- 3. At distances greater than one hundred (100) feet, horizontal distance, from a great pond or a river flowing to a great pond, and seventy five (75) feet, horizontal distance, from the normal high water line of any other water body, tributary stream, or the upland edge of a wetland, there shall be allowed on any lot, in any ten (10) year period, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty (40) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.

In no event shall cleared openings for any purpose, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, 25% of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, including land previously cleared. This provision applies to the portion of a lot within the shoreland zone, including the buffer area, but shall not apply to the General Development or Commercial Fisheries/Maritime Activities Districts.

4. Legally existing non-conforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Ordinance.
5. Fields and other cleared openings, which have reverted to primarily shrubs, trees, or other woody vegetation, shall be regulated under the provisions of Section 15 (P).

Q. Hazard Trees, Storm-Damaged Trees, and Dead Tree Removal

1. Hazard trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:
 - (a) Within the shoreline buffer, if the removal of a hazard tree results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least four (4) feet in height, and be no less than two (2) inches in diameter. Stumps may not be removed.
 - (b) Outside of the shoreline buffer, when the removal of hazard trees exceeds forty (40) percent of the volume of trees four (4) inches or more in diameter, measured at four and one half (4.5) feet above ground level in any ten (10) year period, and/or results in cleared openings exceeding twenty-five (25) percent of the lot area within the shoreland zone, or ten thousand (10,000) square feet, whichever is greater, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level.

- (c) The removal of standing dead trees, resulting from natural causes, is permissible without the need for replanting or a permit, as long as the removal does not result in the creation of new lawn areas, or other permanently cleared areas, and stumps are not removed. For the purposes of this provision dead trees are those trees that contain no foliage during the growing season.
 - (d) The Code Enforcement Officer may require the property owner to submit an evaluation from a licensed forester or arborist before any hazard tree can be removed within the shoreland zone.
 - (e) The Code Enforcement Officer may require more than a one-for-one replacement for hazard trees removed that exceed eight (8) inches in diameter measured at four and one half (4.5) feet above the ground level.
- 2. Storm-damaged trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:
 - (a) Within the shoreline buffer, when the removal of storm-damaged trees results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, replanting is not required, but the area shall be required to naturally revegetate, and the following requirements must be met:
 - (i) The area from which a storm-damaged tree is removed does not result in new lawn areas, or other permanently cleared areas;
 - (ii) Stumps from the storm-damaged trees may not be removed;
 - (iii) Limbs damaged from a storm event may be pruned even if they extend beyond the bottom one-third ($\frac{1}{3}$) of the tree; and
 - (iv) If after one growing season, no natural regeneration or regrowth is present, replanting of native tree seedlings or saplings is required at a density of one seedling per every eighty (80) square feet of lost canopy.
 - (b) Outside of the shoreline buffer, if the removal of storm damaged trees exceeds 40% of the volume of trees four (4) inches or more in diameter, measured at four and one half (4.5) feet above the ground level in any ten (10) year period, or results, in the aggregate, in cleared openings exceeding 25% of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, and no natural regeneration

occurs within one growing season, then native tree seedlings or saplings shall be replanted on a one-for-one basis.

R. Exemptions to Clearing and Vegetation Removal Requirements

The following activities are exempt from the clearing and vegetation removal standards set forth in Section 15(P), provided that all other applicable requirements of this chapter are complied with, and the removal of vegetation is limited to that which is necessary:

1. The removal of vegetation that occurs at least once every two (2) years for the maintenance of legally existing areas that do not comply with the vegetation standards in this chapter, such as but not limited to cleared openings in the canopy or fields. Such areas shall not be enlarged, except as allowed by this section. If any of these areas, due to lack of removal of vegetation every two (2) years, reverts back to primarily woody vegetation, the requirements of Section 15(P) apply;
2. The removal of vegetation from the location of allowed structures or allowed uses, when the shoreline setback requirements of section 15(B) are not applicable;
3. The removal of vegetation from the location of public swimming areas associated with an allowed public recreational facility;
4. The removal of vegetation associated with allowed agricultural uses, provided best management practices are utilized, and provided all requirements of section 15(N) are complied with;
5. The removal of vegetation associated with brownfields or voluntary response action program (VRAP) projects provided that the removal of vegetation is necessary for remediation activities to clean-up contamination on a site in a general development district, commercial fisheries and maritime activities district or other equivalent zoning district approved by the Commissioner that is part of a state or federal brownfields program or a voluntary response action program pursuant 38 MRSA section 343-E, and that is located along:
 - (a) A coastal wetland; or
 - (b) A river that does not flow to a great pond classified as GPA pursuant to 38 MRSA section 465-A.
6. The removal of non-native invasive vegetation species, provided the following minimum requirements are met:
 - (a) If removal of vegetation occurs via wheeled or tracked motorized equipment, the wheeled or tracked motorized equipment is operated

and stored at least twenty-five (25) feet, horizontal distance, from the shoreline, except that wheeled or tracked equipment may be operated or stored on existing structural surfaces, such as pavement or gravel;

- (b) Removal of vegetation within twenty-five (25) feet, horizontal distance, from the shoreline occurs via hand tools; and
- (c) If applicable clearing and vegetation removal standards are exceeded due to the removal of non-native invasive species vegetation, the area shall be revegetated with native species to achieve compliance.

NOTE: An updated list of non-native invasive vegetation is maintained by the Department of Agriculture, Conservation and Forestry's Natural Areas Program: http://www.maine.gov/dacf/mnap/features/invasive_plants/invasives.htm

- 7. The removal of vegetation associated with emergency response activities conducted by the Department, the U.S. Environmental Protection Agency, the U.S. Coast Guard, and their agents.

S. Revegetation Requirements

When revegetation is required in response to violations of the vegetation standards set forth in Section 15(P), to address the removal of non-native invasive species of vegetation, or as a mechanism to allow for development that may otherwise not be permissible due to the vegetation standards, including removal of vegetation in conjunction with a shoreline stabilization project, the revegetation must comply with the following requirements.

- 1. The property owner must submit a revegetation plan, prepared with and signed by a qualified professional, that describes revegetation activities and maintenance. The plan must include a scaled site plan, depicting where vegetation was, or is to be removed, where existing vegetation is to remain, and where vegetation is to be planted, including a list of all vegetation to be planted.
- 2. Revegetation must occur along the same segment of shoreline and in the same area where vegetation was removed and at a density comparable to the pre-existing vegetation, except where a shoreline stabilization activity does not allow revegetation to occur in the same area and at a density comparable to the pre-existing vegetation, in which case revegetation must occur along the same segment of shoreline and as close as possible to the area where vegetation was removed:
- 3. If part of a permitted activity, revegetation shall occur before the expiration of the permit. If the activity or revegetation is not completed before the expiration of the permit, a new revegetation plan shall be submitted with any renewal or new permit application.

4. Revegetation activities must meet the following requirements for trees and saplings:
 - (a) All trees and saplings removed must be replaced with native noninvasive species;
 - (b) Replacement vegetation must at a minimum consist of saplings;
 - (c) If more than three (3) trees or saplings are planted, then at least three (3) different species shall be used;
 - (d) No one species shall make up 50% or more of the number of trees and saplings planted;
 - (e) If revegetation is required for a shoreline stabilization project, and it is not possible to plant trees and saplings in the same area where trees or saplings were removed, then trees or sapling must be planted in a location that effectively reestablishes the screening between the shoreline and structures; and
 - (f) A survival rate of at least eighty (80) percent of planted trees or saplings is required for a minimum five (5) year period.
5. Revegetation activities must meet the following requirements for woody vegetation and other vegetation under three (3) feet in height:
 - (a) All woody vegetation and vegetation under three (3) feet in height must be replaced with native noninvasive species of woody vegetation and vegetation under three (3) feet in height as applicable;
 - (b) Woody vegetation and vegetation under three (3) feet in height shall be planted in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;
 - (c) If more than three (3) woody vegetation plants are to be planted, then at least three (3) different species shall be planted;
 - (d) No one species shall make up 50% or more of the number of planted woody vegetation plants; and
 - (e) Survival of planted woody vegetation and vegetation under three feet in height must be sufficient to remain in compliance with the standards contained within this chapter for minimum of five (5) years.
6. Revegetation activities must meet the following requirements for ground vegetation and ground cover:

- (a) All ground vegetation and ground cover removed must be replaced with native herbaceous vegetation, in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;
- (b) Where necessary due to a lack of sufficient ground cover, an area must be supplemented with a minimum four (4) inch depth of leaf mulch and/or bark mulch to prevent erosion and provide for effective infiltration of stormwater; and
- (c) Survival and functionality of ground vegetation and ground cover must be sufficient to remain in compliance with the standards contained within this chapter for minimum of five (5) years.

T. Erosion and Sedimentation Control

1. All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall also require a written soil erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:
 - (a) Mulching and revegetation of disturbed soil.
 - (b) Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
 - (c) Permanent stabilization structures such as retaining walls or riprap.
2. In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.
3. Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.
4. Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases permanent stabilization shall occur within nine (9) months of the initial date of exposure. In addition:

- (a) Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.
 - (b) Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
 - (c) Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.
5. Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainage ways shall be designed and constructed in order to carry water from a twenty-five (25) year storm or greater, and shall be stabilized with vegetation or lined with riprap.

U. Soils

All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses, shall require a soils report based on an on-site investigation and be prepared by state certified professionals. Certified persons may include Maine Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist.

V. Water Quality

No activity shall deposit on or into the ground or discharge to the waters of the State any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the water classification of the water body, tributary stream or wetland.

W. Archaeological Sites

Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places, as determined by the permitting authority shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least twenty (20) days prior to action being taken by the permitting authority. The

permitting authority shall consider comments received from the Commission prior to rendering a decision on the application.

Section 16: ADMINISTRATION

A. Administering Bodies and Agents

1. Code Enforcement Officer: A Code Enforcement Officer shall be appointed or reappointed annually by July 1st.
2. Board of Appeals: A Board of Appeals shall be created in accordance with the provisions of 30A MRSA section 2691.
3. Planning Board: A Planning Board shall be created in accordance with the provisions of State law.

B. Permits Required

After the effective date of this Ordinance no person shall, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit in the district in which such activity or use would occur; or expand, change, or replace an existing use or structure; or renew a discontinued nonconforming use. A person who is issued a permit pursuant to this Ordinance shall have a copy of the permit on site while the work authorized by the permit is performed.

1. A permit is not required for the replacement of an existing road culvert as long as:
 - (a) The replacement culvert is not more than 25% longer than the culvert being replaced;
 - (b) The replacement culvert is not longer than 75 feet; and
 - (c) Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the water course.
2. A permit is not required for an archaeological excavation as long as the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's level 1 or level 2 approved list, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.
3. Any permit required by this Ordinance shall be in addition to any other permit required by other law or ordinance.

C. Permit Application

1. Every applicant for a permit shall submit a written application, including a scaled site plan, on a form provided by the municipality, to the appropriate official as indicated in the Land Use Table.
2. All applications shall be signed by an owner or individual who can show evidence of right, title or interest in the property or by an agent, representative, tenant, or contractor of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct.
3. All applications shall be dated, and the Code Enforcement Officer or Planning Board, as appropriate, shall note upon each application the date and time of its receipt.
4. If the property is not served by a public sewer, a valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the Plumbing Inspector, shall be submitted whenever the nature of the proposed structure or use would require the installation of a subsurface sewage disposal system.
5. When an excavation contractor will perform an activity that requires or results in more than one (1) cubic yard of soil disturbance, the person responsible for management of erosion and sedimentation control practices at the site must be certified in erosion control practices by the Maine Department of Environmental Protection. This person must be present at the site each day earthmoving activity occurs for a duration that is sufficient to ensure that proper erosion and sedimentation control practices are followed. This is required until erosion and sedimentation control measures have been installed, which will either stay in place permanently or stay in place until the area is sufficiently covered with vegetation necessary to prevent soil erosion. The name and certification number of the person who will oversee the activity causing or resulting in soil disturbance shall be included on the permit application. This requirement does not apply to a person or firm engaged in agriculture or timber harvesting if best management practices for erosion and sedimentation control are used; and municipal, state and federal employees engaged in projects associated with that employment.

D. Procedure for Administering Permits

Within 35 days of the date of receiving a written application, the Planning Board or Code Enforcement Officer shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete. The Planning Board or the Code Enforcement Officer, as appropriate, shall approve, approve with conditions, or deny all permit applications in writing within 35 days of receiving a completed application. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within 35 days after the first available date on the Planning

Board's agenda following receipt of the completed application, or within 35 days of the public hearing, if one is held. Permits shall be approved if the proposed use or structure is found to be in conformance with the purposes and provisions of this Ordinance.

The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance.

After the submission of a complete application to the Planning Board, the Board shall approve an application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use:

1. Will maintain safe and healthful conditions;
2. Will not result in water pollution, erosion, or sedimentation to surface waters;
3. Will adequately provide for the disposal of all wastewater;
4. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat.
5. Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
6. Will protect archaeological and historic resources as designated in the comprehensive plan;
7. Will not adversely affect existing commercial fishing or maritime activities in a Commercial Fisheries/Maritime Activities district;
8. Will avoid problems associated with floodplain development and use; and
9. Is in conformance with the provisions of Section 15, Land Use Standards.

If a permit is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing. No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance or regulation or statute administered by the municipality.

E. Special Exceptions

In addition to the criteria specified in Section 16(D) above, excepting structure setback requirements, the Planning Board may approve a permit for a single family residential structure in a Resource Protection District provided that the applicant demonstrates that all of the following conditions are met:

1. There is no location on the property, other than a location within the Resource Protection District, where the structure can be built.
2. The lot on which the structure is proposed is undeveloped and was established and recorded in the registry of deeds of the county in which the lot is located before the adoption of the Resource Protection District.
3. All proposed buildings, sewage disposal systems and other improvements are:
 - (a) Located on natural ground slopes of less than 20%; and
 - (b) Located outside the floodway of the 100-year floodplain along rivers and artificially formed great ponds along rivers and outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps; all buildings, including basements, are elevated at least one foot above the 100-year floodplain elevation; and the development is otherwise in compliance with any applicable municipal floodplain ordinance.
 - (c) If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be 1/2 the width of the 100-year floodplain.
4. The total footprint, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance.
5. All structures, except functionally water-dependent structures, are set back from the normal high-water line of a water body, tributary stream or upland edge of a wetland to the greatest practical extent, but not less than 75 feet horizontal distance. In determining the greatest practical extent, the planning board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the floodplain, and its proximity to moderate-value and high-value wetlands.

F. Expiration of Permit

1. Permits shall expire one year from the date of issuance, if substantial start is not made in construction or in the use of the property during that period. If a substantial start is made within one year of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire.
2. A permit becomes null and void if violated.
3. If the scope of the permitted activity changes, a new or amended permit is required.

G. Installation of Public Utility Service.

No public utility, water district, sanitary district or any utility company of any kind may install services to any new structure located in the shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this or any previous Ordinance has been issued by the appropriate municipal officials. Following installation of service, the company or district shall forward the written authorization to the municipal officials, indicating that installation has been completed.

H. Appeals

The Board of Appeals shall have the following powers:

1. Administrative Appeals

To hear and decide administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order, requirement decision, or determination made by or failure to act by, the Planning Board in the enforcement or administration of this Ordinance; and to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Code Enforcement Officer in his or her review of and action on a permit application under this Ordinance. Any requirement, decision or determination made, or failure to act, in the enforcement of this Ordinance is not appealable to the Board of Appeals.

2. Variance Appeals

To authorize variances upon appeal, within the limitations set forth in this Ordinance.

Variances may be granted only under the following conditions:

- (a) Variances may be granted only from dimensional requirements including, but not limited to, lot width, structure height, percent of lot coverage, and setback requirements.

- (b) Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.
- (c) The Board shall not grant a variance unless it finds that:
 - (i) The proposed structure or use would meet the provisions of Section 15 except for the specific provision which has created the non-conformity and from which relief is sought; and
 - (ii) The strict application of the terms of this Ordinance would result in undue hardship. The term "undue hardship" shall mean:
 - a. That the land in question cannot yield a reasonable return unless a variance is granted;
 - b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
 - c. That the granting of a variance will not alter the essential character of the locality; and
 - d. That the hardship is not the result of action taken by the applicant or a prior owner.
- (d) Notwithstanding Section 16(H)(2)(c)(ii) above, the Board of Appeals, or the Code Enforcement Officer if authorized in accordance with 30-A MRSA §4353-A, may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the dwelling" shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure. Any permit issued pursuant to this subsection is subject to Sections 16(H)(2)(f) and 16(H)(4)(b)(iv) below.
- (e) The Board of Appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary.

The party receiving the variance shall comply with any conditions imposed.

- (f) A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

3. Administrative Appeals

When the Board of Appeals reviews a decision of the Code Enforcement Officer the Board of Appeals shall hold a “de novo” hearing. At this time the Board may receive and consider new evidence and testimony, be it oral or written. When acting in a “de novo” capacity the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

When the Board of Appeals hears a decision of the Planning Board, it shall hold an appellate hearing, and may reverse the decision of the Planning Board only upon finding that the decision was contrary to specific provisions of the Ordinance or contrary to the facts presented to the Planning Board. The Board of Appeals may only review the record of the proceedings before the Planning Board. The Board Appeals shall not receive or consider any evidence which was not presented to the Planning Board, but the Board of Appeals may receive and consider written or oral arguments. If the Board of Appeals determines that the record of the Planning Board’s proceedings are inadequate, the Board of Appeals may remand the matter to the Planning Board for additional fact finding.

4. Appeal Procedure

(a) Making an Appeal

- (i) An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning Board, except for enforcement-related matters as described in Section 16(H)(1)(a) above. Such an appeal shall be taken within thirty (30) days of the date of the official, written decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement.
- (ii) Applications for appeals shall be made by filing with the Board of Appeals a written notice of appeal which includes:

- a. A concise written statement indicating what relief is requested and why the appeal or variance should be granted.
 - b. A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
- (iii) Upon receiving an application for an administrative appeal or variance, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from
 - (iv) The Board of Appeals shall hold a public hearing on an administrative appeal or a request for a variance within thirty-five (35) days of its receipt of a complete written application, unless this time period is extended by the parties.

(b) Decision by Board of Appeals

- (i) A majority of the full voting membership of the board shall constitute a quorum for the purpose of deciding an appeal.
- (ii) The person filing the appeal shall have the burden of proof.
- (iii) The Board shall decide all administrative appeals and variance appeals within thirty five (35) days after the close of the hearing, and shall issue a written decision on all appeals.
- (iv) The Board of Appeals shall state the reasons and basis for its decision, including a statement of the facts found and conclusions reached by the Board. The Board shall cause written notice of its decision to be mailed or hand-delivered to the applicant and to the Department of Environmental Protection within seven (7) days of the Board's decision. Copies of written decisions of the Board of Appeals shall be given to the Planning Board, Code Enforcement Officer, and the municipal officers.

(c) Criteria for Decisions:

All decisions of the Board of Appeals shall be also based on the following criteria:

- (i) Granting any variance shall not merely serve as a convenience to the applicant, but the variance shall be the minimum necessary

for relief due to some demonstrable hardship, and shall be granted only in such instances where reasonable alternative means are not available to resolve the problem.

(ii) Variances shall not be granted in such cases that will impair an adequate supply of light and air to adjacent property, unreasonably increase traffic flow in public streets, increase the danger of fire, endanger the public health and safety or diminish or impair established property values.

(iii) Variances shall not be granted in such cases where it would adversely affect adjoining properties.

(d) All decisions shall become a part of the record and shall include a statement of findings and conclusions as well as the reasons or basis thereof, and the appropriate order, relief or denial thereof.

5. Appeal to Superior Court

Except as provided by 30-A MRSA section 2691(3)(F), any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within thirty (30) days from the date of any decision of the Board of Appeals.

6. Reconsideration

In accordance with 30-A MRSA, section 2691(3)(F), the Board of Appeals may reconsider any decision within forty-five (45) days of its prior decision. A request to the Board to reconsider a decision must be filed within ten (10) days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within forty-five (45) days of the date of the vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the Board members originally voting on the decision, and proper notification to the landowner, petitioner, planning board, code enforcement officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.

Appeal of a reconsidered decision to Superior Court must be made within fifteen (15) days after the decision on reconsideration.

I. Enforcement

1. Nuisances

Any violation of this Ordinance shall be deemed to be a nuisance.

2. Code Enforcement Officer

(a) It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record.

(b) The Code Enforcement Officer shall conduct on site inspections to ensure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance.

(c) The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected.

3. Legal Actions

When the above action does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.

4. Fines

Any person, including but not limited to a landowner, a landowner's agent or a contractor, who violates any provision or requirement of this Ordinance shall be penalized in accordance with 30 A, M.R.S.A., subsection 4452.

NOTE: Current penalties include fines of not less than \$100 nor more than \$2500 per violation for each day that the violation continues. However, in a resource protection district the maximum penalty is increased to \$5000 (38 MRSA Section 4452).

Section 17: DEFINITIONS

Accessory structure or use - a structure or use which is incidental and subordinate to the principal structure or use. Accessory uses, when aggregated, shall not subordinate the principal use of the lot. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure.

Aggrieved party - an owner of land whose property is directly or indirectly affected by the granting or denial of a permit or variance under this Ordinance; a person whose land abuts land for which a permit or variance has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or variance.

Agriculture - the production, keeping or maintenance for sale or lease of plants or animals, including, but not limited to, forages and sod crops, grains and seed crops, dairy animals and dairy products, poultry and poultry products, livestock, fruits and vegetables, and ornamental green-house products. Agriculture does not include forest management and timber harvesting activities.

Aquaculture - the growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

Basal Area - the area of cross-section of a tree stem at 4 1/2 feet above ground level and inclusive of bark.

Basement - any portion of a structure with a floor-to-ceiling height of 6 feet or more and having more than 50% of its volume below the existing ground level.

Boat Launching Facility - a facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.

Bureau of Forestry – State of Maine Department of Agriculture, Conservation, and Forestry

Campground - any area or tract of land to accommodate two (2) or more parties in temporary living quarters, including, but not limited to tents, recreational vehicles or other shelters.

Canopy – the more or less continuous cover formed by tree crowns in a wooded area.

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

NOTE: All areas below the highest annual tide level are coastal wetlands. These areas may consist of rocky ledges, sand and cobble beaches, mud flats, etc., in addition to salt marshes and salt meadows.

Commercial use - the use of lands, buildings, or structures, other than a "home occupation," defined below, the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units.

Cross-sectional area – the cross-sectional area of a stream or tributary stream channel is determined by multiplying the stream or tributary stream channel width by the average stream or tributary stream channel depth. The stream or tributary stream channel width is the straight line distance from the normal high-water line on one side of the channel to the normal high-water line on the opposite side of the channel. The average stream or tributary stream channel depth is the average of the vertical distances from a straight line between the normal high-water lines of the stream or tributary stream channel to the bottom of the channel.

DBH – the diameter of a standing tree measured 4.5 feet from ground level.

Disability - any disability, infirmity, malformation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness; and also includes the physical or mental condition of a person which constitutes a substantial handicap as determined by a physician or in the case of mental handicap, by a psychiatrist or psychologist, as well as any other health or sensory impairment which requires special education, vocational rehabilitation or related services.

Development – a change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring.

Dimensional requirements - numerical standards relating to spatial relationships including but not limited to setback, lot area, shore frontage and height.

Disruption of shoreline integrity - the alteration of the physical shape, properties, or condition of a shoreline at any location by timber harvesting and related activities. A shoreline where shoreline integrity has been disrupted is recognized by compacted, scarified and/or rutted soil, an abnormal channel or shoreline cross-section, and in the case of flowing waters, a profile and character altered from natural conditions.

Driveway - a vehicular access-way less than five hundred (500) feet in length serving two single-family dwellings or one two-family dwelling, or less.

Emergency operations - operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property and livestock from the threat of destruction or injury.

Essential services - the construction, alteration or maintenance of gas, electrical or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services.

Expansion of a structure - an increase in the footprint of a structure, including all extensions such as, but not limited to, attached decks, garages, porches and green-houses.

Expansion of use - the addition of one or more months to a use's operating season; additional hours of operation; or the use of more footprint of a structure or ground area devoted to a particular use.

Family - one or more persons occupying a premises and living as a single house-keeping unit.

Floodway - the channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation by more than one foot in height.

Floor area - the sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls.

Footprint - the entire area of ground covered by the structure(s) on a lot, including but not limited to cantilevered or similar overhanging extensions, as well as unenclosed structures, such as patios and decks.

Forest management activities - timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation or maintenance of roads.

Forest Stand - a contiguous group of trees sufficiently uniform in age class distribution, composition, and structure, and growing on a site of sufficiently uniform quality, to be a distinguishable unit.

Forested wetland - a freshwater wetland dominated by woody vegetation that is six (6) meters tall (approximately twenty (20) feet) or taller.

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

Freshwater wetland - freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are:

- (1) Of ten or more contiguous acres; or of less than 10 contiguous acres adjacent to a surface water body, excluding any river, stream or brook such that in a natural state, the combined surface area is in excess of 10 acres; and
- (2) Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

Functionally water-dependent uses - those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal and inland waters and which cannot be located away from these waters. The uses include, but are not limited to commercial and recreational fishing and boating facilities, finfish and shellfish processing, fish-related storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aides, basins and channels, shoreline structures necessary for erosion control purposes, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water and which cannot reasonably be located or operated at an inland site, and uses which primarily provide general public access to coastal or inland waters. Recreational boat storage buildings are not considered to be a functionally water-dependent use.

Great pond - any inland body of water which in a natural state has a surface area in excess of ten acres, and any inland body of water artificially formed or increased which has a surface area in excess of thirty (30) acres except for the purposes of this Ordinance, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner.

Great pond classified GPA - any great pond classified GPA, pursuant to Title 38 Article 4-A Section 465-A. This classification includes some, but not all impoundments of rivers that are defined as great ponds.

Ground cover – small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor.

Harvest Area - the area where timber harvesting and related activities, including the cutting of trees, skidding, yarding, and associated road construction take place. The area affected by a harvest encompasses the area within the outer boundaries of these activities, excepting unharvested areas greater than 10 acres within the area affected by a harvest.

Hazard tree - a tree with a structural defect, combination of defects, or disease resulting in a structural defect that under the normal range of environmental conditions at the site exhibits a high probability of failure and loss of a major structural component of the tree in a manner that will strike a target. A normal range of environmental conditions does not include meteorological anomalies, such as, but not limited to: hurricanes; hurricane-force winds; tornados; microbursts; or significant ice storm events. Hazard trees also include those trees that pose a serious and imminent risk to bank stability. A target is the area where personal injury or property damage could occur if the tree or a portion of the tree fails. Targets include roads, driveways, parking areas, structures, campsites, and any other developed area where people frequently gather and linger.

Height of a structure - the vertical distance between the mean original (prior to construction) grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances that have no floor area.

Home occupation - an occupation or profession which is customarily conducted on or in a residential structure or property and which is 1) clearly incidental to and compatible with the residential use of the property and surrounding residential uses; and 2) which employs no more than two (2) persons other than family members residing in the home.

Increase in nonconformity of a structure - any change in a structure or property which causes further deviation from the dimensional standard(s) creating the nonconformity such as, but not limited to, reduction in water body, tributary stream or wetland setback distance, increase in lot coverage, or increase in height of a structure. Property changes or structure expansions which either meet the dimensional standard or which cause no further increase in the linear extent of nonconformance of the existing structure shall not be considered to increase nonconformity. For example, there is no increase in nonconformity with the setback requirement for water bodies, wetlands, or tributary streams if the expansion extends no further into the required setback area than does any portion of the existing nonconforming structure. Hence, a structure may be expanded laterally provided that the expansion extends no closer to the water body, tributary stream or wetland than the closest portion of the existing structure from that water body, tributary stream or wetland. Included in this allowance are expansions which in-fill irregularly shaped structures.

Individual private campsite - an area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed ten (10) individuals and which involves site improvements which may include but not be limited to a gravel pad, parking area, fire place, or tent platform.

Industrial - The assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or the extraction of minerals.

Institutional – a non-profit or quasi-public use, or institution such as a church, library, public or private school, hospital, or municipally owned or operated building, structure or land used for public purposes.

Land Management Road - a route or track consisting of a bed of exposed mineral soil, gravel, or other surfacing materials constructed for, or created by, the passage of motorized vehicles and used primarily for timber harvesting and related activities, including associated log yards, but not including skid trails or skid roads.

Licensed Forester - a forester licensed under 32 MRSA, Chapter 76.

Living Space - Living space shall mean any space, area, or room within a structure which is used for living, sleeping, eating, cooking, recreation, or a combination thereof. Spaces, areas, and rooms that shall not be considered living space include but are not limited to unfinished attics, unfinished basements.

Lot area - The area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and areas beneath roads serving more than two lots.

Marina - a business establishment having frontage on navigable water and, as its principal use, providing for hire offshore moorings or docking facilities for boats, and which may also provide accessory services such as boat and related sales, boat repair and construction, indoor and outdoor storage of boats and marine equipment, bait and tackle shops and marine fuel service facilities.

Market value - the estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

Mineral exploration - hand sampling, test boring, or other methods of determining the nature or extent of mineral resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition.

Mineral extraction - any operation within any twelve (12) month period which removes more than one hundred (100) cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and to transport the product removed, away from the extraction site.

Minimum lot width - the closest distance between the side lot lines of a lot. When only two lot lines extend into the shoreland zone, both lot lines shall be considered to be side lot lines.

Multi-unit residential - a residential structure containing three (3) or more residential dwelling units.

Native – indigenous to the local forests.

Non-conforming condition – non-conforming lot, structure or use which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendment took effect.

Non-conforming lot - a single lot of record which, at the effective date of adoption or amendment of this Ordinance, does not meet the area, frontage, or width requirements of the district in which it is located.

Non-conforming structure - a structure which does not meet any one or more of the following dimensional requirements; setback, height, lot coverage, or footprint, but which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

Non-conforming use - use of buildings, structures, premises, land or parts thereof which is not allowed in the district in which it is situated, but which is allowed to remain solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

Non-native invasive species of vegetation - species of vegetation listed by the Maine Department of Agriculture, Conservation and Forestry as being invasive in Maine ecosystems and not native to Maine ecosystems.

Normal high-water line (non-tidal waters)- that line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond.

NOTE: Adjacent to tidal waters, setbacks are measured from the upland edge of the “coastal wetland.”

Outlet stream - any perennial or intermittent stream, as shown on the most recent highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or the national map, that flows from a freshwater wetland.

Person - an individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having a joint or common interest, or other legal entity.

Piers, docks, wharfs, bridges and other structures and uses extending over or below the normal high-water line or within a wetland-

Temporary: Structures which remain in or over the water for less than seven (7) months in any period of twelve (12) consecutive months.

Permanent: Structures which remain in or over the water for seven (7) months or more in any period of twelve (12) consecutive months.

Principal structure - a structure other than one which is used for purposes wholly incidental or accessory to the use of another structure or use on the same lot.

Principal use - a use other than one which is wholly incidental or accessory to another use on the same lot.

Public facility - any facility, including, but not limited to, buildings, property, recreation areas, and roads, which are owned, leased, or otherwise operated, or funded by a governmental body or public entity.

Recent floodplain soils - the following soil series as described and identified by the National Cooperative Soil Survey:

Alluvial	Cornish	Charles	Fryeburg
Hadley	Limerick	Lovewell	Medomak
Ondawa	Podunk	Rumney	Saco
Suncook	Sunday	Winooski	

Recreational facility - a place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, excluding boat launching facilities.

Recreational vehicle - a vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pick-up camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the unit must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles.

Replacement system - a system intended to replace: 1.) an existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure, or 2.) any existing overboard wastewater discharge.

Residential dwelling unit - a room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not residential dwelling units.

Residual basal area - the average of the basal area of trees remaining on a harvested site.

Residual Stand - a stand of trees remaining in the forest following timber harvesting and related activities

Riprap - rocks, irregularly shaped, and at least six (6) inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two (2) units horizontal to one (1) unit vertical or less.

River - a free-flowing body of water including its associated floodplain wetlands from that point at which it provides drainage for a watershed of twenty five (25) square miles to its mouth.

NOTE: The portion of a river that is subject to tidal action is a coastal wetland.

Road - a route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles, excluding a driveway as defined.

Salt marsh - Areas of coastal wetland (most often along coastal bays) that support salt tolerant species, and where at average high tide during the growing season, the soil is irregularly inundated by tidal waters. The predominant species is saltmarsh cordgrass (*Spartina alterniflora*). More open areas often support widgeon grass, eelgrass, and Sago pondweed.

Salt meadow - Areas of a coastal wetland that support salt tolerant plant species bordering the landward side of salt marshes or open coastal water, where the soil is saturated during the growing season but which is rarely inundated by tidal water. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black rush; common threesquare occurs in fresher areas.

Sapling - a tree species that is less than two (2) inches in diameter at four and one half (4.5) feet above ground level.

Seedling - a young tree species that is less than four and one half (4.5) feet in height above ground level.

Service drop - any utility line extension which does not cross or run beneath any portion of a water body provided that:

1. in the case of electric service

- (a) the placement of wires and/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
- (b) the total length of the extension is less than one thousand (1,000) feet.

2. in the case of telephone service

- (a) the extension, regardless of length, will be made by the installation of telephone wires to existing utility poles, or
- (b) the extension requiring the installation of new utility poles or placement underground is less than one thousand (1,000) feet in length.

Setback - the nearest horizontal distance from the normal high-water line of a water body or tributary stream, or upland edge of a wetland, to the nearest part of a structure, road, parking space or other regulated object or area.

Sideline Setback - Distance is to the drip edge of the principal structure or to the extreme outer edge of any attachment to the structure including but not limited to decks, steps, and bay windows. Hedges, trees, stone walls, and/or fences must remain within the confines of the owners property.

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

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

Shoreline – the normal high-water line, or upland edge of a freshwater or coastal wetland.

Skid Road or Skid Trail - a route repeatedly used by forwarding machinery or animal to haul or drag forest products from the stump to the yard or landing, the construction of which requires minimal excavation.

Slash - the residue, e.g., treetops and branches, left on the ground after a timber harvest.

Storm-damaged tree - a tree that has been uprooted, blown down, is lying on the ground, or that remains standing and is damaged beyond the point of recovery as the result of a storm event.

Stream - a free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or the national map, to the point where the stream becomes a river or where the stream meets the shoreland zone of another water body or wetland. When a stream meets the shoreland zone of a water body or wetland and a channel forms downstream of the water body or wetland as an outlet, that channel is also a stream.

Structure - anything temporarily or permanently located, built, constructed or erected for the support, shelter or enclosure of persons, animals, goods or property of any kind, or anything constructed or erected on or in the ground. The term includes structures temporarily or permanently located, such as decks, patios and satellite dishes. Structure does not include fences; poles and wiring and other aerial equipment normally associated with service drops, including guy wires and guy anchors; subsurface waste water disposal systems as defined in Title 30-A, section 4201, subsection 5; geothermal heat exchange wells as defined in Title 32, section 4700-E, subsection 3-C; or wells or water wells as defined in Title 32, section 4700-E, subsection 8.

Substantial start - completion of thirty (30) percent of a permitted structure or use measured as a percentage of estimated total cost.

Subsurface sewage disposal system – any system designed to dispose of waste or waste water on or beneath the surface of the earth; includes, but is not limited to: septic tanks; disposal fields; grandfathered cesspools; holding tanks; pretreatment filter, piping, or any other fixture, mechanism, or apparatus used for those purposes; does not include any discharge system licensed under 38 MRSA Section 414, any surface waste water disposal system, or any municipal or quasi-municipal sewer or waste water treatment system.

Sustained slope - a change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.

Tidal waters – all waters affected by tidal action during the highest annual tide.

Timber harvesting - the cutting and removal of timber for the primary purpose of selling or processing forest products. "Timber harvesting" does not include the cutting or removal of vegetation within the shoreland zone when associated with any other land use activities. The cutting or removal of trees in the shoreland zone on a lot that has less than two (2) acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Section 15 (P), *Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting*.

Timber harvesting and related activities - timber harvesting, the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting.

Tree - a woody perennial plant with a well-defined trunk(s) at least two (2) inches in diameter at four and one half (4.5) feet above the ground, with a more or less definite crown, and reaching a height of at least ten (10) feet at maturity.

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

This definition does not include the term "stream" as defined elsewhere in this Ordinance, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland.

NOTE: Water setback requirements apply to tributary streams within the shoreland zone.

Upland edge of a wetland - the boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the highest annual tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where

the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are six (6) meters (approximately twenty (20) feet tall or taller.

Vegetation - all live trees, shrubs, and other plants including without limitation, trees both over and under 4 inches in diameter, measured at 4 1/2 feet above ground level.

Volume of a structure - the volume of all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof.

Water body - any great pond, river or stream.

Water Crossing - any project extending from one bank to the opposite bank of a river or stream, tributary stream, or wetland whether under, through, or over the water or wetland. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings. This definition includes crossings for timber harvesting equipment and related activities.

Wetland - a freshwater or coastal wetland.

Windfirm - the ability of a forest stand to withstand strong winds and resist wind throw, wind rocking, and major breakage.

Woody Vegetation - live trees or woody, non-herbaceous shrubs.

SELECTMEN-ASSESSORS
OVERSEERS OF THE POOR
John H Gray
Darrell F Fowler
Richard M Bakeman
Code Enforcement Officer & LPI
Lewis P Hutchins
OFFICE ADMINISTRATOR
Gayle M Clifford
ASSESSORS' AGENT
RJD Appraisals, Ellery G Bane
HARBORMASTER
Sarah Cox

Town of Brooksville, Maine
First settled in 1777
Incorporated June 13, 1817
SELECTMEN AVAILABLE
WEDNESDAY MORNINGS
1 Town House Road
Brooksville, Maine 04617
A Unique & Friendly Maine Town
Phone 207-326-4518 Fax 207-326-8039

TAX COLLECTOR
Yvonne Redman
TREASURER
Freida L Peasley
TOWN CLERK & REGISTRAR
Amber Bakeman
ROAD COMMISSIONER
Mark Blake
ANIMAL CONTROL
Deborah Ciomei
FIRE CHIEF
Matthew Dow
SUPERINTENDENT OF SCHOOLS
Mark Hurvitt

Town of Brooksville Special Amusement Permit

Name of Applicant: _____
Name of Business: _____
Location of Business: _____
Mailing Address: _____
Length of time at this
Address : _____

No licensee for the sale of liquor to be consumed on his or her premises shall allow any music, except radio or similar mechanical devices or any dancing or entertainment of any sort, unless first obtaining from the Selectmen of the Town of Brooksville a "Special Amusement Permit" signed by at least a majority of the members.

Is applicant the owner of premises YES _____ NO _____
Is this a seasonal business YES _____ NO _____
If yes please state open dates : _____

Has applicant(s) or manager ever been convicted of a felony: YES _____ N _____
If yes please supply information in regards to those circumstances: _____

Are the applicant's premises in compliance with all ordinances, rules and regulations of the Town of Brooksville and the State of Maine: YES _____ NO _____

Does applicant have a current liquor license: YES _____ NO _____
List date current Liquor License Expires : _____

APPLICANT MUST ATTACH A COPY OF CURRENT LIQUOR LICENSE.

**SELECTMEN -ASSESSORS
OVERSEERS OF THE POOR**
 John H Gray
 Darrell F Fowler
 Richard M Bakeman
Code Enforcement Officer & LPI
 Lewis P Hutchins
OFFICE ADMINISTRATOR
 Gayle M Clifford
ASSESSORS' AGENT
 RJD Appraisals, Ellery G Bane
HARBORMASTER
 Sarah Cox

Town of Brooksville, Maine

First settled in 1777
 Incorporated June 13, 1817
 SELECTMEN AVAILABLE
 WEDNESDAY MORNINGS
 1 Town House Road
 Brooksville, Maine 04617
 A Unique & Friendly Maine Town
 Phone 207-326-4518 Fax 207-326-8039

TAX COLLECTOR
 Yvonne Redman
TREASURER
 Freida L Peasley
TOWN CLERK & REGISTRAR
 Amber Bakeman
ROAD COMMISSIONER
 Mark Blake
ANIMAL CONTROL
 Deborah Ciomei
FIRE CHIEF
 Matthew Dow
SUPERINTENDENT OF SCHOOLS
 Mark Hurvitt

CLASS OF PERMIT

Applicant must check only one.

Class A : _____ (Single Instrumentalist without mechanical amplification)
 Class B : _____ (Single Instrumentalist & Vocalist without mechanical amplification)
 Class C : _____ (One or more Instrumentalist or Vocalist without mechanical amplification)
 Class D : _____ (Any of the above with mechanical amplification)
 Class E : _____ (Dancing with any of the above)

Signature of Applicant : _____ Dated: _____

Name of Applicant (please Print): _____

All statements made on this form are true and complete at the time of signing:

Cost of Permit is \$65.00 plus any related expenses.

Public Notice due \$ _____ Payment received: ____/____/____

License due \$65.00 Received by: _____

Total due \$ _____

State of Maine

County of Hancock ss.

Dated at Brooksville, Maine on : _____

The undersigned being Municipal Officers of the Town of Brooksville hereby certify that we
 have given public notice on this application, held a public hearing in its regards, and grant a
 Special Amusement Permit to the Applicant : _____
 on this date: _____ To expire : _____

_____ John H Gray, Chairman
 _____ Darrell F Fowler
 _____ Richard M Bakeman

Given under our hands on this date: _____ at Brooksville, Maine 04617

TOWN OF BROOKSVILLE
SPECIAL AMUSEMENT PERMIT REGULATIONS

These regulations shall be known and may be cited as the
"Special Amusement Permit Regulations of the Town of Brooksville."

1. Purpose

The purpose of these Regulations is to control, as required by Title 28-A M.R.S.A. §1054, the issuance of Special Amusement Permits for music, dancing or entertainment in facilities licensed by the State of Maine to sell liquor or malt liquor in the Town of Brooksville.

2. Definitions

(a) Entertainment: Any amusement, performance, exhibition or diversion for patrons or customers of the licensed premises whether provided by professional entertainers or by full time or part-time employees of the licensed premises whose incidental duties include activities with an entertainment value.

(b) Licensee: The holder of a license issued pursuant to the provisions of Title 28-A M.R.S.A., Liquors, as amended, or any person, individual, partnership, firm, association, corporation or other legal entity acting as agent or employee of any holder of said license.

3. Permit Required

(a) No licensee for the sale of liquor or malt liquor to be consumed on his or her licensed premises, situated in the Town of Brooksville, shall permit on said licensed premises any music, except radio or similar mechanical device, or any dancing or entertainment of any sort unless the licensee shall have first obtained from the Selectmen of Brooksville a Special Amusement Permit signed by at least a majority of the members of the Board of Selectmen.

(b) Applications for all Special Amusement Permits shall be made in writing to the said Board of Selectmen and shall state the name of the applicant; his or her residence address; the name of the business to be conducted; his or her business address; the nature of his or her business; the location to be used; whether the applicant has ever had a license to conduct the business therein described either denied or revoked and, if so, the applicant shall describe those circumstances specifically; whether the applicant, including all partners or corporate officers, has ever been convicted of a felony and, if so, the application shall describe specifically those circumstances; and any additional information as may be needed by the Selectmen in the issuing of the permit including, but not limited to, a copy of the applicant's current liquor license.

(c) No permit shall be issue for any thing or act on premises if the premises and building to be used for the purposes do not fully comply with all ordinances, articles, bylaws, or rules and regulations of the Town of Brooksville.

(d) The fee for a Special Amusement Permit shall be \$65.00 plus any related costs.

(e) Within fifteen (15) days of receiving a request for a Special Amusement Permit the Selectmen shall hold a public hearing, at which time the testimony of the applicant and any interested member of the public shall be taken. Prior to the hearing reasonable notice of same shall be given to all owners of land within three hundred feet (300') of the applicant's premises.

(f) For purposes of the issuance of a new permit for an applicant for a particular location, reasonable notice to owners of land within three hundred feet (300') of the applicant's premises shall include written notice sent by first class United States mail, postage prepaid. For purposes of renewing a permit for an applicant against whom no complaint has been lodged in the preceding year, reasonable notice to all persons may be achieved by giving notice of hearing in a newspaper of general circulation in the Town of Brooksville at least seven (7) days prior to the hearing. Otherwise, written notice shall be sent to the owners of land within three hundred feet (300') of the applicant's premises.

(g) The Selectmen, after hearing and upon such terms and conditions as they reasonably deem necessary to protect the public interest and to fulfill the purposes of these regulations, shall grant or renew a permit unless it finds that issuance of the permit will be detrimental to the public health, safety or welfare, or would violate municipal ordinances, rules, regulations, articles or bylaws.

(h) A permit shall be valid only for the license year of the applicant's existing liquor license.

4. Classes of Permit

(a) Special Amusement Permits granted by the Selectmen shall be limited to the following classes:

Class A - Single Instrumentalist without mechanical amplification.

Class B - Single Instrumentalist and Vocalist without mechanical amplification.

Class C - One or more vocalists and/or instrumentalists without mechanical amplification.

Class D - Any of the above with mechanical amplification.

Class E - Dancing with any of the above.

(b) Any permit granted shall be for one of the above noted classes. A licensee shall not permit on the licensed premises any music, dancing or entertainment which exceeds that permitted by the class of his or her permit, during the period for which the permit is valid as otherwise determined by these regulations.

(c) During the period for which a license is valid, the licensee may reapply for a new Special Amusement Permit if he or she desires to permit dancing or musical entertainment which exceeds that permitted by the current permit. Said reapplication shall be governed by all the provisions of these regulations with respect to applications for a Special Amusement Permit in general, including the payment of the permit fee of 65.00 Dollars (\$65.00).

(d) A violation of this section by a licensee shall be grounds to revoke or suspend his or her permit and/or refuse to grant a permit upon subsequent application by the same licensee.

5. Applications

The application for a Special Amusement Permit shall set forth the type of music and entertainment intended by the applicant to be permitted on the licensed premises and whether dancing is permitted.

6. Inspections

(a) Whenever inspections of the premises used for or in connection with the operation of a licensed business which obtained a Special Amusement Permit are provided for or required by ordinance, regulation, or State Law, or are reasonably necessary to secure compliance with an ordinance, regulation, or State Law, it shall be the duty of the licensee, or the person in charge of the premises to be inspected, to admit any authorized officer, official or employee of the Town of Brooksville at any reasonable time that admission is requested.

(b) The Selectmen shall require an initial inspection of the premises and licensee for overall ability to comply with the provisions of these regulations, and for the purpose of imposing conditions on any permit issued.

(c) In addition to any other penalty which may be provided, the Selectmen may revoke the Special Amusement Permit of any Licensee in the Town of Brooksville who refuses to permit any such officer, official or employee to make an inspection, or who interferes with such officer, official or employee while in the performance of his or her duties.

7. Enforcement Authority

The provisions of these regulations shall be enforced by the Selectmen and their duly authorized agents, and may also be enforced by the Code Enforcement Officer.

8. Violations

Each violation of these regulations following a warning or a citation issued by a police officer or the Code Enforcement Officer shall constitute a separate violation.

9. Warning for First Violation

If a licensee has not had a warning or a citation for violation of these regulations or any previous version of these regulations within the immediately preceding twelve (12) months, a police officer or the Code Enforcement Officer, upon concluding that there are reasonable grounds to believe that a violation of these regulations has occurred or is occurring, shall, orally or in writing, warn the licensee or the licensee's agent on the premises of the violation and shall inform the licensee or the licensee's agent of the steps necessary to correct the violation. The official issuing the warning shall endeavor to create a written record of the warning and to notify the licensee and the owner of the premises in writing of the warning and the corrective actions requested, provided, however, that a failure to do so shall not prevent subsequent enforcement actions consistent with these regulations.

10. Citations for Subsequent Violations

If a licensee has had a warning or a citation for violation of these regulations or any previous version of these regulations within the immediately preceding twelve (12) months, a police officer or the Code Enforcement Officer, upon concluding that there are reasonable grounds to believe that a violation of these regulations has occurred or is occurring, shall issue the licensee a citation to appear in the Maine District Court to answer therefor. The official issuing the citation shall also provide a copy of the citation to the Selectmen for action consistent with these regulations.

11. Court Action

A violation of these regulations within twelve (12) months after a licensee or the licensee's agent has been warned about any other violation of these regulations, or within twelve (12) months after a previous conviction for violation of these regulations, shall constitute a civil offense. The penalty for the conviction of a first violation in any twelve (12) month period shall be a fine of no less than one hundred dollars (\$100.00) and no more than one thousand dollars (\$1000.00). The penalty for the conviction of a second or subsequent violation in any twelve (12) month period shall be no less than one hundred dollars (\$100.00) more than the penalty assessed for the previous conviction, but no more than one thousand dollars (\$1000.00). Any penalties assessed hereunder shall inure to the benefit of the Town of Brooksville. Any violation of these regulations shall be deemed a public nuisance and may be subject to abatement by a restraining order or injunction issued by a court of competent jurisdiction, irrespective of whether a citation has been issued or a civil penalty has been sought.

12. Action by Selectmen

(a) Upon being informed that a licensee has been issued a citation for violation of these regulations, the Selectmen shall provide written notice to the licensee, either in hand or by certified mail, return receipt requested, and to all owners of land within three hundred feet (300') of the licensee's premises, by first class mail, that , in not less than

seven (7) days after the date of the notice, the Selectmen shall conduct a public hearing to consider whether the licensee's special amusement permit shall be suspended or revoked. Neither the failure of any landowner to actually receive notice or the licensee's refusal to accept certified mail shall necessitate another hearing or invalidate any action taken by the Selectmen at such hearing.

(b) Following a hearing the Selectmen, by a preponderance of the evidence, shall make a determination of whether the licensee has committed a violation of these regulations. If the Selectmen find that the licensee has committed a violation within twelve (12) months after the licensee or the licensee's agent has been warned about any other violation of these regulations, but that within twelve (12) months no other violation of these regulations has been found by a court or the Selectmen to have occurred, they shall suspend the licensee's special amusement permit for a period of thirty (30) days from the date of the hearing. If the Selectmen find that licensee has committed a violation within twelve (12) months after any other violation of these regulations has been found by a court or the Selectmen to have occurred, they shall revoke the licensee's permit for a period of one (1) year from the date of the hearing.

(c) The Selectmen shall have authority to enter into a consent agreement with any licensee concerning payment of any fine or other civil penalty.

13. Regulation of Noise

An applicant for a Special Amusement Permit hereunder shall, as part of his or her application, demonstrate the ability to prevent the emanation of excessive noise from the premises sought to be licensed, whether such noise is brought about by music, dancing or entertainment, except for radio or other mechanical devices excluded under Title 28-A M.R.S.A. § 1054, or amendments thereto.

14. Sources of Noise

Sources of noise contemplated by this section shall include musical instruments, sound modification or amplification devices used in connection with musical instruments and or other similar devices which produce, reproduce or amplify sound created by musical instruments. Sources of noise shall further include any noise or sound produced directly or indirectly by applicant's music, dancing or entertainment except for those mechanical devices specifically excluded under Title 28-A M.R.S.A. § 1054 or amendments thereto.

15. Noise

Sources of noise shall be required to be muffled so as not to be objectionable due to intermittence, beat, frequency, shrillness or intensity or volume.

16. Nuisance

The licensee or his or her authorized representative shall not permit the use of the premises to result in any continued, excessive or loud

or endangers the comfort, repose, health or safety of individuals, or which results in disturbing the peace and tranquility of the neighborhood.

17. Permit Decision Procedures

Any licensee requesting a Special Amusement Permit from the Selectmen shall be notified in writing of the decision no later than thirty (30) days from the date the request was received. In the event that a license applicant is denied a permit, the applicant shall be provided with the reasons for denial in writing. The applicant may not reapply for a permit within thirty (30) days after an application for a permit has been denied, except with the consent of the Selectmen.

18. Appeal Procedure

Any applicant who has requested a permit and has been denied or any licensee whose permit has been revoked or suspended, may, within thirty (30) days of denial, suspension or revocation, appeal the decision to Brooksville Board of Appeals.

19. Admission

A licensed hotel, Class A restaurant, Class A tavern or restaurant malt liquor licensee who has been issued a Special Amusement Permit may charge admission in designated areas approved by the municipal Special Amusement Permit.

20. Separability

The invalidity of any provision of these regulations shall not invalidate any other part.

Pursuant to authorization granted in Article 70 of the Brooksville Town Meeting held on March 4, 1997, the Board of Selectment have adopted and established the foregoing Special Amusement Permit Regulation, which shall take effect on the date indicated below.

Date: September 10, 1997

Clifford A. Leach
Clifford A. Leach

Richard M. Bakeman
Richard M. Bakeman

Earle R. Condon
Earle R. Condon

Town of Brooksville Subdivision Ordinance

adopted at Special Town Meeting

May 18, 2005

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Buffer Area: A part of a property or an entire property, which is not built upon and is specifically intended to separate and thus minimize the effects of a land use activity (e.g., noise, dust, visibility, glare, etc.) on adjacent properties or on sensitive natural resources.

Cluster Subdivision: A subdivision in which the lot sizes are reduced below those normally required in the zoning district in which the development is located in return for the provision of permanent open space.

Common Open Space: Land within or related to a subdivision, not individually owned or within an individual lot, which is designed and intended for the common use or enjoyment of the residents of the development or the general public. It may include complementary structures and improvements, typically used for maintenance and operation of the open space, such as for outdoor recreation.

Complete Application: An application shall be considered complete upon submission of the required fee and all information required by these ordinances, or by a vote by the Board to waive the submission of required information. The Board shall issue a written statement to the applicant upon its determination that an application is complete.

Complete Substantial Construction: The completion of a portion of the improvements which represents no less than thirty percent of the costs of the proposed improvements within a subdivision. If the subdivision is to consist of individual lots to be sold or leased by the subdivider, the cost of construction of buildings on those lots shall not be included. If the subdivision is a multifamily development, or if the applicant proposes to construct the buildings within the subdivision, the cost of building construction shall be included in the total costs of proposed improvements.

Conservation Easement: A nonpossessory interest in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational or open space use; protecting natural resources and historically significant sites; or maintaining air or water quality.

Density: The number of dwelling units per acre of land.

Developed Area: Any area on which a site improvement or change is made, including buildings, landscaping, parking areas, and streets.

Direct Watershed of a Great Pond: That portion of the watershed which drains directly to the great pond without first passing through an upstream great pond.

Driveway: A vehicular accessway serving one dwelling unit.

Dwelling Unit: A room or suite of rooms used as a habitation which is separate from other such rooms or suites of rooms, and which contains independent living, cooking, and sleeping facilities; includes single family houses, and the units in a duplex, apartment house, multifamily dwellings, and residential condominiums.

Engineered Subsurface Waste Water Disposal System: A subsurface waste water disposal system designed, installed, and operated as a single unit to treat 2,000 gallons per day or more; or any system designed to treat waste water with characteristics significantly different from domestic waste water.

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Final Plan: The final drawings, on which the applicant's plan of subdivision is presented to the Board for approval and which, if approved, may be recorded at the Registry of Deeds.

Freshwater Wetland: Areas which are inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and are not part of a great pond, coastal wetland, river, stream or brook. Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the above criteria.

Great Pond: Any inland body of water which in a natural state has a surface area in excess of ten acres, and any inland body of water artificially formed or increased which has surface area in excess of thirty acres, except for the purposes of these regulations, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner.

High Intensity Soil Survey: A map prepared by a Certified Soil Scientist, identifying the soil types down to 1/8 acre or less at a scale equivalent to the subdivision plan submitted. The soils shall be identified in accordance with the National Cooperative Soil Survey. The map shall show the location of all test pits used to identify the soils, and shall be accompanied by a log of each sample point identifying the textural classification and the depth to seasonal high water table or bedrock at that location. Single soil test pits and their evaluation for suitability for subsurface waste water disposal systems shall not be considered to constitute high intensity soil surveys.

100-Year Flood: The highest level of flood that, on the average, has a one percent chance of occurring in any given year.

High Water Mark:

Coastal Waters: The elevation at which vegetation changes from predominantly salt tolerant to predominantly non-salt tolerant. By way of illustration, salt tolerant vegetation includes, but is not limited to: salt marsh grass, salt meadow hay, black arrowgrass, seaside lavender, silverweed, salt marsh bullrush, seaside plantain, orach, salt marsh sedge, salt marsh aster. In places where vegetation is not present, the high water mark shall be the identifiable debris line left by non-storm tidal action.

Inland Waters: That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. In the case of wetlands adjacent to rivers, streams, brooks, or ponds, the normal high-water mark is the upland edge of the wetland, and not the edge of the open water.

Level of Service: A description of the operating conditions a driver will experience while traveling on a particular street or highway calculated in accordance with the provisions of the Highway Capacity Manual, 1991 edition, published by the National Academy of Sciences, Transportation Research Board. There are six levels of service ranging from Level of Service A, with free traffic flow and no delays to Level of Service F, with forced flow and congestion resulting in complete failure of the roadway.

Multifamily Development: A subdivision which contains three or more dwelling units on land in common ownership, such as apartment buildings, condominiums or mobile home parks.

Net Residential Acreage: The total developable acreage available for the subdivision, as shown on the final subdivision plan, minus all areas set aside for streets or access and areas that are unsuitable for development.

Net Residential Density: The average number of dwelling units per net residential acre.

New Structure or Structures: Includes any structure for which construction begins on or after September 23, 1988. The area included in the expansion of an existing structure is deemed to be a new structure.

Person: Includes a firm, association, organization, partnership, trust, company, or corporation, as well as an individual.

Planning Board: The Planning Board of the Town of Brooksville.

Preliminary Plan: The preliminary drawings indicating the proposed layout of the subdivision to be submitted to the Planning Board for its consideration.

Professional Engineer: A professional engineer, registered in the State of Maine.

Public Water System: A water supply system that provides water to at least 15 service connections or services water to at least 25 individuals daily for at least 30 days a year.

Recording Plan: An original of the Final Plan, suitable for recording at the Registry of Deeds and which need show only information relevant to the transfer of an interest in the property, and which does not show other information presented on the plan such as sewer and water line locations and sizes, culverts, and building lines.

Sight Distance: The length of an unobstructed view from a particular access point to the farthest visible point of reference on a roadway. Used in these regulations as a reference for unobstructed road visibility.

Sketch Plan: Conceptual maps, renderings, and supportive data describing the project proposed by the applicant for initial review prior to submitting an application for subdivision approval.

Street: Public and private ways such as alleys, avenues, highways, roads, and other rights-of-way, as well as areas on subdivision plans designated as rights-of-way for vehicular access other than driveways.

Street Classification:

Cul-de-sac: A street with only one outlet and having at its terminus a circular area for the reversal of traffic movement.

Industrial or Commercial Street: Streets servicing industrial or commercial uses.

Minor Residential Street: A street servicing only residential properties.

Private Right-of-Way: A minor residential street servicing no more than eight dwelling units, which is not intended to be dedicated as a public way.

Subdivision: The division of a tract or parcel of land into 3 or more lots within any 5-year period, that begins after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise. The term "subdivision" also includes the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-year period, the construction or placement of 3 or more dwelling units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period.

In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of such tract or parcel shall be considered to create the first 2 lots and the next dividing of either of the first 2 lots, by whomever accomplished, unless otherwise exempted herein shall be considered to create a third lot, unless:

- a. Both dividings are accomplished by a subdivider who has retained one of the lots for the subdivider's own use as a single-family residence or for open space land as defined in Title 36 M.R.S.A., §1102 for a period of at least 5 years before the second dividing occurs; or
- b. The division of the tract or parcel is otherwise exempt under this definition.

A lot of 40 or more acres shall not be counted as a lot, except where the lot or parcel from which it was divided is located entirely or partially within any shoreland area as defined in Title 38 M.R.S.A., §435, or the municipality's shoreland zoning.

A division accomplished by devise, condemnation, order of court, gift to a person related to the donor by blood, marriage or adoption or a gift to a municipality or by transfer of any interest in land to the owner of land abutting that land does not create a lot or lots for the purposes of these regulations, unless the intent of the transferor in any transfer or gift is to avoid the objectives of these regulations. If real estate exempt under this paragraph by a gift to a person related to the donor by blood, marriage or adoption is transferred within 5 years to another person not related to the donor of the exempt real estate by blood, marriage or adoption, then the previously exempt division creates a lot or lots for the purposes of this definition. The grant of bona fide security interest in an entire lot that has been exempted from the definition under this paragraph, or subsequent transfer of that entire lot by the original holder of the security interest or that person's successor in interest, does not create a lot for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of these regulations.

In determining the number of dwelling units in a structure, the provisions regarding the determination of the number of lots shall apply, including exemptions from the definition of a subdivision of land.

Subdivision, Major: Any subdivision containing five or more lots or dwelling units.

Subdivision, Minor: Any subdivision containing four, or less, lots or dwelling units.

Tract or Parcel of Land: All contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof.

Usable Open Space: That portion of the common open space which due to its slope, drainage characteristics and soil conditions can be used for active recreation, horticulture or agriculture. In order to be considered usable open space, the land must not be poorly drained or very poorly drained, have ledge outcroppings, or areas with slopes exceeding 10%.

ARTICLE 4 - ADMINISTRATIVE PROCEDURE

4.1 Notice of Meetings

It shall be the responsibility of the Board to give public notice in the Annual Town Report of the schedule for monthly meetings. Special meetings will be publicized by posted notice. Any meeting that will have items voted upon will be publicized two weeks in advance.

4.2 Application Schedule

Subdivision applications shall be presented at regularly scheduled meetings of the Board.

4.3 Preapplication

An applicant may present a preapplication sketch plan for both minor and major subdivisions and make a verbal presentation regarding the site and the proposed subdivision.

Procedure:

- A. Following the applicant's presentation, the Board may ask questions and make suggestions to be incorporated by the applicant into the application.
- B. The date of an on-site inspection may be selected.

4.4 Submission.

The Preapplication Sketch Plan shall show in simple sketch form the proposed layout of streets, lots, buildings and other features in relation to existing conditions. The Sketch Plan, which does not have to be engineered and may be a free-hand penciled sketch, should be supplemented with general information to describe or outline the existing conditions of the site and the proposed development. It will be most helpful to both the applicant and the Board for site conditions such as steep slopes, wet areas and vegetative cover to be identified in a general manner. It is recommended that the sketch plan be superimposed on or accompanied by a copy of the assessor's map(s) on which the land is located. The Sketch Plan shall be accompanied by:

- A. A copy of a portion of the U.S.G.S. topographic map of the area showing the outline of the proposed subdivision unless the proposed subdivision is less than ten acres in size.
- B. A copy of that portion of the county soil survey covering the proposed subdivision, showing the outline of the proposed subdivision.

4.5 Contour Interval and On-Site Inspection.

Within thirty days of the preapplication meeting, the Board shall hold an on-site inspection of the property and inform the applicant in writing of the required contour interval on the Final Plan. The applicant shall place "flagging" at the centerline of any proposed streets, and at the approximate intersections of the street centerlines and lot corners, prior to the on-site inspection. The Board shall judge when conditions are feasible for on-site inspections.

4.6 Rights not Vested

The preapplication submittal or review of the sketch plan or the on-site inspection shall not be considered the initiation of the review process for the purposes of bringing the plan under the protection of Title 1 M.R.S.A., §302.

4.7 Establishment of File.

Following the preapplication submittal the Board shall establish a file for the proposed subdivision. All correspondence and submissions regarding the preapplication meeting and application shall be maintained in the file. A copy of the minutes of the meeting shall be also placed in the file.

ARTICLE 5 - SUBDIVISION APPLICATION PROCEDURE & REQUIREMENTS

5.1 General.

All federal and state requirements which apply to the subdivision must be completed, signed and accompany the application.

5.2 Procedure.

- A. All applications for final plan approval for a Subdivision shall be accompanied by a non-refundable application fee of \$200.00 and \$100.00 per lot or dwelling unit, payable by check to the municipality. In addition, the applicant shall be charged any costs incurred by the Board in the process of reviewing the application.
- B. The applicant, or his duly authorized representative, shall attend the meeting of the Board to present the final plan. Failure to attend the meeting to present the final plan shall result in a delay of the Board's receipt of the plan until the next meeting which the applicant attends.
- C. Immediately following the meeting at which an application for final plan approval of a subdivision is initially presented, the Board shall:
 1. Issue a dated receipt to the applicant.
 2. Notify in writing all owners of abutting property that an application for subdivision approval has been submitted, specifying the location of the proposed subdivision and including a general description of the project.
 3. Notify the clerk and the review authority of the neighboring municipalities if any portion of the subdivision abuts or crosses the municipal boundary.
- D. Within thirty days of the receipt of the final plan application, the Board shall determine whether the application is complete and notify the applicant in writing of its determination. If the application is not complete, the Board shall notify the applicant of the specific additional material needed to complete the application.
- E. Upon a determination that a complete application has been submitted for review, the Board shall notify the applicant in writing of that determination. The Board shall hold a public hearing on the final plan application.
- F. The Board shall hold a public hearing within thirty days of determining that it has received a complete application, and shall publish a notice of the date, time and place of the hearing in a newspaper of general circulation in the municipality at least two times, the date of the first publication to be at least seven days prior to the hearing. A copy of the notice shall be mailed to the applicant and abutters.
- G. Within thirty days from the public hearing, or within another time limit as may be otherwise mutually agreed to by the Board and the applicant, the Board shall make findings of fact, and conclusions relative to the criteria contained in Title 30-A M.R.S.A., §4404 and the

standards of Article 11. If the Board finds that all the criteria of the Statute and the standards of Article 11 have been met, they shall approve the final plan. If the Board finds that any of the criteria of the statute or the standards of Article 11 have not been met, the Board shall either deny the application or approve the application with conditions to ensure all of the criteria and standards will be met by the subdivision. The Board shall issue a written notice of its decision to the applicant, including its findings, conclusions and any reasons for denial or conditions of approval.

5.2.1 *Subdivision Review Costs*

In addition to the application fee required under section 5.2 above, the Planning Board may require an applicant to deposit with the Town Treasurer, in advance, a sum determined by the Planning Board to be sufficient to reimburse all outside costs to be incurred by the Planning Board in its review of the subdivision application. Such costs may include, but are not limited to, costs of professional surveying, engineering and legal assistance to the Planning Board in reviewing the applicant's plan submissions and environmental, legal and other technical issues related to the application. The purpose of such outside services shall be to provide independent technical advice to the Planning Board when, in the opinion of the Planning Board, the public interest or issues raised by the application may require it.

The Planning Board shall provide its estimate of review costs to the applicant within thirty (30) days after the Planning Board's receipt of the application for final plan approval. The application shall be deemed incomplete, and all time limits for further review of the application by the Planning Board under this ordinance shall be suspended, pending deposit of the estimated amount by the applicant with the Town Treasurer. The Treasurer shall maintain such funds in a segregated account for the proposed subdivision, and shall draw on that account as directed by the Planning Board, to pay outside costs incurred by the Planning Board in its subdivision review. Any funds remaining in the account following final action by the Planning Board on the subdivision application and full payment of the Planning Board's outside review costs shall be returned to the applicant. In the event the Planning Board's actual outside review costs exceed the initial cost estimate, the Planning Board may require the applicant to deposit additional funds with the Town Treasurer as provided above.

In the event the applicant disagrees with the Planning Board's initial review cost estimate or any supplemental estimate, the applicant may appeal the Planning Board's estimate to the Board of Appeals. Any appeal for this purpose shall suspend the time limits for further review of the application by the Planning Board, until acted on by the Board of Appeals. The Board of Appeals' decision as to the amount to be deposited shall be final, with no further right of appeal by any person. Following action by the Board of Appeals, the applicant shall deposit the amount determined by the Board of Appeals, not in excess of the Planning Board's original estimate. Time limits for review of the application by the Planning Board shall resume upon deposit of the amount concerned by the applicant.

5.2.2 *Improvement Guarantees*

For the purpose of avoiding expenditure of Town funds to complete required improvements in approved subdivisions, the Planning Board shall not finally approve any major subdivision unless and until the applicant provides a financial guaranty for completion of all required public or common improvements, including sewer and water service, electrical

installations, street construction, storm water improvements, fire safety improvements, environmental mitigation improvements and such other public or common improvements required as a condition of the Planning Board's subdivision approval, to include improvements required by other permitting agencies and incorporated in the Planning Board's final subdivision review findings by reference.

Cost estimates for all required improvements shall be provided by the applicant, and shall be verified by an engineer engaged by the Town for this purpose. Each cost estimate shall include a contingency allowance equal to not less than ten percent of the estimated direct cost of the improvements, to allow for unforeseen conditions or circumstances.

Improvement guaranties provided under this section shall consist of one of the following:

- (a) Deposit of cash with the Town in escrow, in the amount of the approved cost estimate plus contingency; or
- (b) Posting of a surety bond from a reputable bond surety company authorized to do business in the State of Maine in the amount of the cost estimate plus contingency; or
- (c) Submission of a letter of credit from an established banking institution authorized to do business in the State of Maine in the amount of the cost estimate plus contingency; or
- (d) Other personal financial guaranties approved by the Planning Board.

The form and sufficiency of any proposed improvement guaranty shall be reviewed and approved by the Town's attorney prior to final approval by the Planning Board.

Upon satisfactory completion of all required improvements, as certified by the Town's code enforcement officer or engineer in accordance with section 8.1 below, the improvement guarantee may be reduced to ten percent (10%) of its original amount. The improvement guaranty shall remain in effect in the reduced amount for one year after completion of the improvements, as a protection against the cost of uncorrected defects. Upon expiration of the one year period, the improvements shall be re-inspected by the Town's code enforcement officer or engineer as provided in section 8.1 below. If no uncorrected defects are found to exist at that time, the improvement guaranty shall be terminated and, in the case of a cash escrow, all remaining funds on deposit shall be returned to the applicant.

In its discretion, the Planning Board may apply the requirements of this section to minor subdivision approvals, when necessary in the public interest. Improvement guaranty requirements under this section may not be waived by the Planning Board with respect to major subdivisions.

5.3 Submissions.

The final plan application shall consist of the following items.

- A. Application Form.
- B. Location Map.

The location map shall be drawn at a size adequate to show the relationship of the proposed subdivision to the adjacent properties, and to allow the Board to locate the subdivision within the municipality. The location map shall show:

1. Existing subdivisions in the proximity of the proposed subdivision.
2. Locations and names of existing and proposed streets.
3. Boundaries of the Shoreland Zoning Districts.
4. An outline of the proposed subdivision and any remaining portion of the owner's property if the final plan submitted covers only a portion of the owner's entire contiguous holding.

C. Final Plan.

The subdivision plan for a Subdivision shall consist of two reproducible, stable-based transparencies, one to be recorded at the Registry of Deeds, the other to be filed at the municipal office, and three copies of one or more maps or drawings drawn to a scale of not more than one hundred feet to the inch. The reproducible transparencies shall be embossed with the seal of the individual responsible for preparation of the plan. Plans for subdivisions containing more than one hundred acres may be drawn at a scale of not more than two hundred feet to the inch provided all necessary detail can easily be read. Plans shall be no larger than 24 by 36 inches in size, and shall have a margin of two inches outside of the border lines on the left side for binding and a one inch margin outside the border along the remaining sides. Space shall be provided for endorsement by the Board. Three copies of all information accompanying the plan shall be submitted.

D. Application Requirements.

The application for approval of a Subdivision shall include the following information. The Board may require additional information to be submitted, where it finds necessary in order to determine whether the criteria of Title 30-A M.R.S.A., §4404 are met.

1. Proposed name of the subdivision, or identifying title, and the name of the municipality in which it is located, plus the assessor's map and lot numbers.
2. Verification of right, title, or interest in the property.
3. A standard boundary survey of the parcel, giving complete descriptive data by bearings and distances, made and certified by a registered land surveyor. The corners of the parcel shall be located on the ground and marked by monuments. The plan shall indicate the type of monument found or to be set at each lot corner.
4. A copy of the most recently recorded deed for the parcel. A copy of all deed restrictions, easements, rights-of-way, or other encumbrances currently affecting the property.
5. A copy of any deed restrictions intended to cover all or part of the lots or dwellings in the subdivision.
6. An indication of the type of sewage disposal to be used in the subdivision.
 - a. When sewage disposal is to be accomplished by subsurface waste water disposal systems, test pit analyses, prepared by a Licensed Site Evaluator shall be provided. A map showing the location of all test pits dug on the site shall be submitted.
7. An indication of the type of water supply system(s) to be used in the subdivision. When water is to be supplied by private wells, the applicant shall supply evidence of adequate ground water supply prepared by a well driller or a hydrogeologist familiar with the area.
8. The date the plan was prepared, north point, and graphic map scale.
9. The names and addresses of the record owner, applicant, and individual or company who prepared the plan, and adjoining property owners.
10. A high intensity soil survey by a Certified Soil Scientist may be required. Wetland areas shall be identified on the survey, regardless of size.
11. The number of acres within the proposed subdivision, location of property lines, existing buildings, vegetative cover type, and other essential existing physical features.

12. The location of all rivers, streams and brooks within or adjacent to the proposed subdivision. If any portion of the proposed subdivision is located in the direct watershed of a great pond, the application shall indicate which great pond.
13. Contour lines at the interval specified by the Board, showing elevations in relation to mean sea level.
14. The Shoreland Zoning District in which the proposed subdivision is located.
15. The location and size of existing and proposed sewers, culverts, drainage ways and catch basins on or adjacent to the property to be subdivided.
16. The location, names, and present widths of existing streets and highways, and existing and proposed easements, building lines, parks and other open spaces and historical sites and monuments on or adjacent to the subdivision. The plan shall contain sufficient data to allow the location, bearing and length of every street line, lot line, and boundary line to be readily determined and be reproduced upon the ground. These lines shall be tied to reference points previously established.
17. The width and location of any streets, public improvements or open space shown upon the official map within the subdivision.
18. The location of any open space to be preserved and a description of proposed improvements and its management.
19. All parcels of land proposed to be dedicated to public use and the conditions of such dedication. Written offers to convey title to the municipality of all public open spaces shown on the plan, and copies of agreements or other documents showing the manner in which open spaces to be retained by the applicant or lot owners are to be maintained shall be submitted. If open space or other land is to be offered to the municipality its acceptance is contingent upon a vote of the Town.
20. If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation, as depicted on the municipality's Flood Insurance Rate Map, shall be delineated on the plan.
21. A hydrogeologic assessment prepared by a Certified Geologist or Registered Professional Engineer, experienced in hydrogeology, when the subdivision is not served by public sewer and
 - a. Any part of the subdivision is located over a sand and gravel aquifer, as shown on a map entitled "Hydrogeologic Data for Significant Sand and Gravel Aquifers," by the Maine Geological Survey, 1985, Map No. 20; or
 - b. The subdivision has an average density of more than one dwelling unit per 100,000 square feet.

The Board may require a hydrogeologic assessment in other cases where site considerations or development design indicate greater potential of adverse impacts on ground water quality. These cases include extensive areas of shallow to bedrock soils; or cluster developments in which the average density is less than one dwelling unit per 100,000 square feet but the density of the developed portion is in excess of one dwelling unit per 80,000 square feet; or proposed use of shared or common subsurface waste water disposal systems.
22. An estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours. Trip generation rates used shall be taken from Trip Generation Manual, 1991 edition, published by the Institute of Transportation Engineers.
23. A storm water management plan, prepared by a registered professional engineer in accordance with the Stormwater Management for Maine: Best Management Practices, published by the Maine Department of Environmental Protection (1995). The Board

may not waive submission of the storm water management plan unless the subdivision is not in the watershed of a great pond, the proposed subdivision will not involve grading which changes drainage patterns, and the addition of impervious surfaces such as roofs and driveways is less than 5% of the area of the subdivision.

24. An erosion and sedimentation control plan prepared in accordance with the Maine Erosion and Sedimentation Control Handbook for Construction: Best Management Practices, published by the Hancock County Soil and Water Conservation District and the Maine Department of Environmental Protection, March 1991. The Board may not waive submission of the erosion and sedimentation control plan unless the subdivision is not in the watershed of a great pond, the proposed subdivision will not involve grading which changes drainage patterns, and the addition of impervious surfaces such as roofs and driveways is less than 5% of the area of the subdivision.
25. All areas within or adjacent to the proposed subdivision which are either listed on or eligible to be listed on the National Register of Historic Places shall be identified.
26. The location and method of disposal for land clearing and construction debris.

ARTICLE 6 -MAJOR SUBDIVISION

6.1 Procedure.

- A. All of the requirements listed under Article 5 Subdivision Application Procedures & Requirements” must be met.
- B. Prior to submittal of the final plan application, the following approvals shall be obtained in writing, where applicable:
 1. Maine Department of Environmental Protection, under the Site Location of Development Act, Natural Resources Protection Act, or if a waste water discharge license is needed.
 2. Maine Department of Human Services, if the applicant proposes to provide a public water system.
 3. Maine Department of Human Services, if an engineered subsurface waste water disposal system(s) is to be utilized.
 4. U.S. Army Corps of Engineers, if a permit under Section 404 of the Clean Water Act is required.

ARTICLE 7 -REVISIONS TO APPROVED PLANS

7.1 Procedure.

An applicant for a revision to a previously approved plan shall appear before the Board at a regularly scheduled meeting. Procedure for final plan approval shall be followed.

7.2 Submissions.

The applicant shall submit a copy of the approved plan as well as three copies of the proposed revisions. The application shall also include enough supporting information to allow the Board to make a determination that the proposed revisions meet the standards of these regulations and the criteria of the statute. The revised plan shall indicate that it is the revision of a previously approved and recorded plan and shall show the title of the subdivision and the book and page or cabinet and sheet on which the original plan is recorded at the Registry of Deeds.

7.3 Scope of Review.

The Board's scope of review shall be limited to those portions of the plan which are proposed to be changed.

ARTICLE 8 -INSPECTIONS AND ENFORCEMENT

8.1 The Code Enforcement Officer is the contact person for inspections and enforcement of the subdivision ordinance.

- A. If the inspecting official finds upon inspection of the improvements that any of the required improvements have not been constructed in accordance with the plans and specifications filed by the subdivider, he shall so report in writing to the municipal officers, Board, and the subdivider and builder. The municipal officers shall take any steps necessary to assure compliance with the approved plans.
- B. If at any time it appears necessary or desirable to modify the required improvements before or during the construction of the required improvements, the inspecting official is authorized to approve minor modifications due to unforeseen circumstances such as encountering hidden outcrops of bedrock, natural springs, etc. The inspecting official shall issue any approval under this section in writing and shall transmit a copy of the approval to the Board. Revised plans shall be filed with the Board. For major modifications, such as relocation of rights-of-way, property boundaries, changes of grade by more than 1%, etc., the subdivider shall obtain permission from the Board to modify the plans.
- C. At the close of each summer construction season the Town shall, at the expense of the subdivider, have the site inspected by a qualified individual. By October 1 of each year during which construction was done on the site, the inspector shall submit a report to the Board based on that inspection, addressing whether storm water and erosion control measures (both temporary and permanent) are in place, are properly installed, and appear adequate. The report shall also include a discussion and recommendations on any problems which were encountered.
- D. Prior to the sale of any lot, the subdivider shall provide the Board with a letter from a Registered Land Surveyor, stating that all monumentation shown on the plan are in place.
- E. Upon completion of street construction and prior to a vote by the municipal officers to submit a proposed public way to a town meeting, a written certification signed by a professional engineer shall be submitted to the municipal officers at the expense of the applicant, certifying that the proposed public way meets or exceeds the design and construction requirements of these regulations. If there are any underground utilities, the servicing utility shall certify in writing that they have been installed in a manner acceptable to the utility. "As built" plans shall be submitted to the municipal officers.

8.2 Violations and Enforcement.

- A. No plan of a division of land within the municipality which would constitute a subdivision shall be recorded in the Registry of Deeds until a final plan has been approved by the Board in accordance with these regulations.
- B. A person shall not convey, offer or agree to convey any land or dwelling units in a subdivision which has not been approved by the Board and recorded in the Registry of Deeds.
- C. A person shall not sell, lease or otherwise convey any land or dwelling units in an approved subdivision which is not shown on the plan as a separate lot.
- D. No public utility, water district, sanitary district or any utility company of any kind shall serve any lot or dwelling unit in a subdivision for which a final plan has not been approved by the Board.

- E. Development of a subdivision without Board approval shall be a violation of law. Development includes grading or construction of roads, grading of land or lots, or construction of buildings which require a plan approved as provided in these regulations and recorded in the Registry of Deeds.
- F. No construction in a subdivision will be allowed before the street upon which the lot fronts is completed in accordance with these regulations up to and including the entire frontage of the lot.
- G. Violations of the above provisions of this section are a nuisance and shall be punished in accordance with the provisions of Title 30-A M.R.S.A., §4452.

ARTICLE 9 -PERFORMANCE STANDARDS

The performance standards in this article are intended to clarify and expand upon the criteria for approval found within the subdivision statute (Title 30-A M.R.S.A., § 4404). In reviewing a proposed subdivision, the Board shall review the application for conformance with the following performance standards and make findings that each has been met prior to the approval of a final plan. In all instances the burden of proof shall be upon the applicant to present adequate information to indicate all performance standards and statutory criteria for approval have been or will be met.

9.1. Pollution.

- A. The proposed subdivision shall not discharge waste water to a water body without a license from the Maine Department of Environmental Protection.
- B. Discharges of storm water shall be treated to remove oil, grease, and sediment prior to discharge into surface waterbodies. When the subdivision is within the watershed of a great pond, the storm water shall be treated in order to remove excess nutrients.

9.2. Sufficient Water.

A. Water Supply.

- 1. When a proposed subdivision is not within the area designated for public water supply service in the comprehensive plan, water supply shall be from individual wells or a private community water system.
 - a. Individual wells shall be sited and constructed to prevent infiltration of surface water, and contamination from subsurface waste water disposal systems and other sources of potential contamination.
 - b. Lot design shall permit placement of wells, subsurface waste water disposal areas, and reserve sites for subsurface waste water disposal areas in compliance with the Maine Subsurface Wastewater Disposal Rules and the Well Drillers and Pump Installers Rules.
 - c. If a central water supply system is provided by the applicant, the location and protection of the source, the design, construction and operation of the system shall conform to the standards of the Maine Rules Relating to Drinking Water (10-144A C.M.R. 231).
 - d. Additional water storage capacity may be required based upon the recommendation of the fire chief.

B. Water Quality.

Water supplies shall meet the primary drinking water standards contained in the Maine Rules Relating to Drinking Water. If existing water quality contains contaminants in excess of the secondary drinking water standards in the Maine Rules Relating to Drinking Water, that fact shall be disclosed in a note on the plan to be recorded in the Registry of Deeds.

ARTICLE 9.2.1-WATER FOR FIRE PROTECTION.

All subdivisions shall comply with the Fire Protection design standards in section 10.1(B) below. Design standards for Fire Protection may be waived or modified by the Planning Board only upon:

- (a) recommendation of the fire chief; and
- (b) a finding by the Planning Board that all principal use structures in the proposed subdivision will be individually protected by a public or private fire protection system (e.g., pressurized wet or dry sprinkler system) that complies with all recommended standards of the National Fire Protection Association (NFPA) and required standards of the Maine State Fire Marshal for the structure concerned.

If the Planning Board grants a waiver or modification of the Fire Protection design standards, the Planning Board shall condition its final approval of the subdivision on the applicant's and subsequent owners' compliance with all NFPA and State Fire Marshal standards, per section 9.2.1(b) above.

9.3. Impact on Aquifer Supply.

The impact of the proposed subdivision on the supply of water to existing wells in the area must be appraised by a local well driller or other hydrological expert to insure that existing wells will not be adversely affected.

9.4. Soil Erosion.

- A. The proposed subdivision shall prevent soil erosion from entering waterbodies, wetlands, and adjacent properties and comply with all federal and state requirements as specified in Sections 5 and 6.
- B. The procedures outlined in the erosion and sedimentation control plan shall be implemented during the site preparation, construction, and clean-up stages.
- C. Topsoil shall be considered part of the subdivision and shall not be removed from the site except for surplus topsoil from roads, parking areas, and building excavations.

9.5. Traffic Conditions.

- A. In general, provision shall be made for vehicular access to the subdivision and circulation within the subdivision in such a manner as to:
 - 1. Safeguard against hazards to traffic and pedestrians in existing streets and within the subdivision;
 - 2. Avoid traffic congestion on any street; and
 - 3. Provide safe and convenient circulation on public streets and within the subdivision.
- B. More specifically, access and circulation shall also conform to the following standards.
 - 1. The street giving access to the subdivision and neighboring streets and intersections which can be expected to carry traffic generated by the subdivision shall have the capacity or be suitably improved to accommodate that traffic and avoid unreasonable congestion. A minimum sight distance of ten feet for each mile per hour of posted speed limit shall be maintained or provided.

2. Where necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, provision shall be made for turning lanes, traffic directional islands, frontage roads, sidewalks, bicycleways and traffic controls within existing public streets.
3. Accessways to non-residential subdivisions or to multifamily developments shall be designed by a qualified traffic engineer to avoid queuing of entering vehicles on any street. Left lane storage capacity shall be provided to meet anticipated demand. A study or analysis by a qualified traffic engineer to determine the need for a left-turn storage lane shall be done.
4. Where topographic and other site conditions allow, provision shall be made for street connections to:
 - a. Facilitate fire protection services as approved by the fire chief; or
 - b. Enable the public to travel between two existing or potential uses, generally open to the public, without need to travel upon a public street.
5. Street Names, Signs and Lighting.

Streets which join and are in alignment with streets of abutting or neighboring properties shall bear the same name. Names of new streets shall not duplicate, nor bear phonetic resemblance to the names of existing streets within the municipality, and shall be subject to the approval of the Board of Selectmen. No street name shall be the common given name of a person. The developer shall either install street name, traffic safety and control signs meeting municipal specifications or reimburse the municipality for the costs of their installation. Street lighting shall be installed as approved by the Planning Board.
6. Clean-up.

Following street construction, the developer or contractor shall conduct a thorough clean-up of stumps and other debris from the entire street right-of-way. If on-site disposal of the stumps and debris is proposed, the site shall be indicated on the plan, and be suitably covered with fill and topsoil, limed, fertilized, and seeded.

ARTICLE 9.5.1-ROAD STANDARDS

General Provisions:

The final subdivision plan shall clearly delineate location and dimensions of all existing and proposed roads and streets, including existing and proposed private roads and streets that are intended to provide access to the proposed subdivision. The final subdivision plan shall clearly state which proposed roads and streets will be dedicated by the applicant for possible public acceptance and which roads shall be retained as private roads or streets.

The Planning Board's approval of the final subdivision plan shall not operate as an acceptance of proposed roads or streets by the Town of Brooksville and shall not obligate the Town to provide street maintenance or repair. In the event that the final subdivision plan contemplates retention of proposed roads or streets as private roads or streets, the applicant shall provide the Planning Board with information concerning arrangements for ongoing maintenance and repair of the roads and streets concerned, such as proposed deed covenant, homeowners association agreement, or private road maintenance agreement.

All proposed subdivision road entrances must be designed and constructed in accordance with the standards contained in the Town of Brooksville Road Entrance Permit Ordinance.

1. Roads within a Subdivision. The Planning Board shall not approve any subdivision plan unless proposed streets are designed and constructed in accordance with this article, or the Board has received adequate assurances that proposed streets will be so constructed.

2. Subdivision Applications. Subdivider shall submit to the Planning Board all information concerning proposed streets as an integral part of their plot plan and application for subdivision approval, and otherwise as required by the Planning Board.

3. Right of Way.

A. The minimum right of way for two-way traffic width shall be 50 feet, and marked with permanent monuments furnished by the applicant. The cost of the monuments and survey shall be paid by the applicant. Upon recommendation of the fire chief and/or the Town's engineering consultant, the Planning Board may reduce the minimum right-of-way width to 40 feet for two-way roads serving as access to no more than five (5) residential properties. The Planning Board may increase the required minimum right-of-way width to 60 feet for roads that will serve as major collector or arterial roads as defined by Maine Department of Transportation rules or traffic standards.

B. The entire width of the roadway, shoulder and ditch (with backslope) shall be cleaned of all stumps, roots, bushes and perishable material, including all trees except those not interfering with travel or use, and deemed to be desirable for shade or beautification by the Planning Board. The roadway section shall be in the center of the right of way.

4. Road Design. Road design and construction shall conform with drawings Appendix 1 (Gravel Roads) and Appendix 2 (Paved Roads), hereto attached, and section 5 below*

5. Road Base. Aggregates for both the base and surface courses shall consist of granular material containing hard durable particles with reasonably uniform distribution in size from the largest to the smallest particle. Materials that have abnormally high absorption characteristics or that break up when alternately frozen and thawed or wetted and dried shall not be used. The material passing a three inch sieve shall contain not more than seven (7) percent passing a No. 200 mesh sieve, The base course shall not contain any rocks larger than six (6) inches in diameter. All base course material shall be free of vegetable, matter, lumps or balls of clay and other deleterious substances. The top six (6) inches (the surface course) shall consist of durable gravel and contain no particles larger than two (2) inches in diameter.

The finish grade for a paved road (the leveling course) shall consist of durable, gravel and contain no particles larger than one (1) inch diameter and shall not contain more than five (5) percent passing a No. 200 mesh sieve. *

The finish grade (surface gravel) for a mineral surface (dirt) road should be a tighter consistency than the subbase gravel by containing more fines and contain no particles larger than one (1) inch and shall contain 7 to 12 percent passing a No. 200 mesh sieve.

* Further guidelines may be found in Appendix 3--MODEL GRADING SPECIFICATIONS, Appendix 4 MODEL SHOULDER/DITCHING SPECIFICATIONS and Appendix 5, Table 1

6. Paving. An all weather flexible type pavement shall be constructed on all new highways and streets prior to their acceptance as town ways. 2" or 2 2" Hot Plant-Mixed Bituminous Concrete depending on Street classification will be considered adequate to fulfill this requirement.

7. Drainage.

A. Adequate provision shall be made for disposal of all surface water and underground water through ditches, culverts, underdrain and/or storm water drainage systems. Complete underground storm sewer systems shall be installed when required by the Board of Selectmen or Planning Board in all proposed streets within all residential subdivisions. Culverts shall be not less than 15 inches in diameter and not less than 24 feet in length, except that a culvert placed more than 3 feet below surface shall be not less than 30 feet in length. Culverts shall be installed with headers to prevent erosion. Culverts shall be 14 gauge metal pipe, either asphalt coated or aluminized type 2 or constructed of plastic of a type and design approved for use on secondary roads by the Maine Department of Transportation. The Road Commissioner may authorize the use of 16 gauge metal pipe if he is satisfied that there will be suitable cover, bed, materials, and compaction prior to installation. Catch basins shall be not less than 30 inches in diameter.

B. Where bridge structures or reinforced concrete box culverts are required to cross major streams, detailed design plans shall be submitted to the Planning Board for review at least 6 months in advance of anticipated construction of the structure to permit appropriate review. All bridges and reinforced concrete box culverts shall be designed to accommodate at least the anticipated 50-year level flood.

C. A new asphalt corrugated metal perforated or DOT approved plastic perforated underdrain pipe of at least 6" diameter shall be installed to properly drain all springs or areas where the ground water level is too high and would provide a hazard to the stability of the roadway base.

8. Slope Easements. Whenever the ratio of slopes for ditches, shoulders, grading and other purposes required by this article cannot be adhered to within the right of way limits, and grading or excavation is necessary beyond this width, it shall be necessary for the applicant to secure sufficient slope easements from abutting owners without cost or expense to the Town, and such rights properly indemnifying the Town shall be presented and recorded prior to any action for acceptance.

9. Utilities. Water, sewer and other utility lines shall be clear of any present or designated sidewalks or trees. Utility poles shall be so placed that any present or designated sidewalk or tree may be contained within the boundaries of the street right of way without obstruction by poles or appurtenances.

10. Dead-end Streets. All dead-end streets shall be constructed to provide a suitable cul-de-sac turnaround with a minimum radius of 50 feet. A "T" turnaround may be substituted for a cul-de-sac if approved by the Planning Board. It is the intent to use a "T" turnaround only where future street extension is planned within 3 years, or adverse horizontal or vertical geometries physically prohibit a cul-de-sac.

11. Inspections During Construction. The Code Enforcement Officer or other agent of the Planning Board shall make periodic inspections of streets during construction to insure that it is in conformance with this article. He shall report to the Planning Board on construction progress when requested.

9.6. Sewage Disposal.

Private Systems.

1. The applicant shall submit evidence of site suitability for subsurface sewage disposal prepared by a Maine Licensed Site Evaluator in full compliance with the requirements of the State of Maine Subsurface Wastewater Disposal Rules.
 - a. The site evaluator shall certify in writing that all test pits which meet the requirements for a new system represent an area large enough to install a disposal area on soils which meet the Disposal Rules.
 - b. On lots in which the limiting factor has been identified as being within 24 inches of the surface, a second site with suitable soils shall be shown as a reserve area for future replacement of the disposal area. The reserve area shall be shown on the plan and restricted so as not to be built upon.
 - c. In no instance shall a disposal area be on a site which requires a New System Variance from the Subsurface Wastewater Disposal Rules.

9.7. Impact on the Municipality's Ability to Dispose of Solid Waste.

If the additional solid waste from the proposed subdivision exceeds the capacity of the municipal solid waste facility, causes the municipal facility to no longer be in compliance with its license from the Department of Environmental Protection, or causes the municipality to exceed its contract with a non-municipal facility, the applicant shall make alternate arrangements for the disposal of solid waste. The alternate arrangements shall be at a disposal facility which is in compliance with its license. The Board may not require the alternate arrangement to exceed a period of five years.

9.8. Impact on Natural Beauty, Aesthetics, Historic Sites, Wildlife Habitat, Rare Natural Areas or Public Access to the Shoreline.

A. Preservation of Natural Beauty and Aesthetics.

1. The plan shall, by notes on the final plan and deed restrictions, limit the clearing of trees to those areas designated on the plan. The plan shall limit clearing of trees on any lot to not more than fifty percent (50%) of the wooded areas existing on that lot as of the final plan application date. Clearing of trees in any areas designated in the plan as open space or common land under section 9.16 below shall be limited to not more than twenty-five percent (25%) of the wooded areas existing on such open space or common land as of the final plan application date. The total clearing of existing trees on any tract or parcel of land proposed for subdivision, including areas cleared for roads, other access or utility purposes, shall be limited to not more than fifty percent (50%) of the total wooded areas existing on the tract or parcel of land as of the final plan application date.
2. The Planning Board shall not approve a subdivision of land from which timber has been harvested in violation of rules adopted by the State of Maine pursuant to Title 12 M.R.S.A. §8869 except expressly allowed and upon the findings required under Title 30-A M.R.S.A. §4404(20).

3. The Board may require the application to include a landscape plan that will show the preservation of any existing trees larger than 24 inches diameter breast height, the replacement of trees and vegetation, and graded contours. Notwithstanding the landscape plan, trees larger than 24 inches diameter that are diseased or pose a safety hazard may be removed. The landscape plan shall provide for removal of trees larger than 24 inches diameter and other vegetation when necessary to achieve sight distances for street entrances required under section 9.5(B)(1) above, but the subdivision shall be designed and street entrances located so as to minimize the need for such removals.

4. Removal of “public shade trees”, defined in 30-A MRSA § 3281 as “all trees within or upon the limits of any highway”, shall require prior permission of the Town’s tree warden, conservation commission, or selectmen.

B. Retention of Open Spaces and Natural or Historic Features.

1. If any portion of the subdivision is located within an area designated by the comprehensive plan as open space or greenbelt, that portion shall be reserved for open space preservation.

2. If any portion of the subdivision is located within an area designated as a unique natural area by the Maine Natural Areas Program the plan shall indicate appropriate measures for the preservation of the values which qualify the site for such designation.

3. If any portion of the subdivision is designated a site of historic or prehistoric importance by the Maine Historic Preservation Commission, appropriate measures for the protection of the historic or prehistoric resources shall be included in the plan.

4. Land reserved for open space purposes shall be of a character, configuration and location suitable for the particular use intended.

C. Protection of Significant Wildlife Habitat.

If any portion of a proposed subdivision lies within:

1. 250 feet of the following areas identified and mapped by the Department of Inland Fisheries and Wildlife.

- a. Habitat for species appearing on the official state or federal lists of endangered or threatened species;
- b. High and moderate value waterfowl and wading bird habitats, including nesting and feeding areas;
- c. Shorebird nesting, feeding and staging areas and seabird nesting islands;
- d. Critical spawning and nursery areas for Atlantic sea run salmon as defined by the Atlantic Sea Run Salmon Commission.

The applicant shall demonstrate that there shall be no adverse impacts on the habitat and species it supports.

D. Any existing public rights of access to the shoreline of a water body shall be maintained by means of easements or rights-of-way, or should be included in the open space with provisions made for continued public access.

9.9. Conformance with Zoning Ordinance and Other Land Use Ordinances.

All lots shall meet the minimum dimensional requirements of the zoning ordinance for the zoning district in which they are located. The proposed subdivision shall meet all applicable performance standards or design criteria from the zoning ordinance.

9.10. Financial and Technical Capacity.

A. Financial Capacity.

The applicant shall have adequate financial resources to construct the proposed improvements and meet the criteria of the statute and the standards of these regulations. When the applicant proposes to construct the buildings as well as the subdivision improvements, the applicant shall have adequate financial resources to construct the total development.

B. Technical Ability.

1. The applicant shall retain qualified contractors and consultants to supervise, construct and inspect the required improvements in the proposed subdivision.
2. In determining the applicant's technical ability the Board shall consider the applicant's previous experience, the experience and training of the applicant's consultants and contractors, and the existence of violations of previous approvals granted to the applicant.

9.11. Impact on Water Quality or Shoreline.

Cutting or removal of vegetation along waterbodies shall not increase water temperature, result in shoreline erosion or sedimentation of waterbodies.

9.12. Impact on Ground Water Quality or Quantity.

A. Ground Water Quality.

1. When a hydrogeologic assessment is submitted, the assessment shall contain at least the following information:
 - a. A map showing the basic soils types.
 - b. The depth to the water table at representative points throughout the subdivision.
 - c. Drainage conditions throughout the subdivision.
 - d. A map showing the location of any subsurface waste water disposal systems and drinking water wells within the subdivision and within 200 feet of the subdivision boundaries.
2. Projections of ground water quality shall be based on the assumption of drought conditions (assuming 60% of annual average precipitation).
3. No subdivision shall increase any contaminant concentration in the ground water to more than one half of the Primary Drinking Water Standards. No subdivision shall increase any contaminant concentration in the ground water to more than the Secondary Drinking Water Standards.
4. If ground water contains contaminants in excess of the primary standards, and the subdivision is to be served by on-site ground water supplies, the applicant shall demonstrate how water quality will be improved or treated.
5. If ground water contains contaminants in excess of the secondary standards, the subdivision shall not cause the concentration of the parameters in question to exceed 150% of the ambient concentration.
6. Subsurface waste water disposal systems and drinking water wells shall be constructed as shown on the map submitted with the assessment. If construction standards for drinking water wells or other measures to reduce ground water contamination and protect drinking water supplies are recommended in the assessment, those standards shall be included as a note on the final plan, and as restrictions in the deeds to the affected lots.

B. Ground Water Quantity.

1. Ground water withdrawals by a proposed subdivision shall not lower the water table beyond the boundaries of the subdivision.

2. A proposed subdivision shall not result in a lowering of the water table at the subdivision boundary by increasing runoff with a corresponding decrease in infiltration of precipitation

9.13. Floodplain Management.

When any part of a subdivision is located in a special flood hazard area as identified by the Federal Emergency Management Agency:

- A. The plan shall include a statement that structures in the subdivision shall be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation. Such a restriction shall be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The statement shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on the plan.

9.14. Identification of Freshwater Wetlands.

Freshwater wetlands shall be identified in accordance with the *1987 Corps of Engineers Wetland Delineation Manual*, published by the United States Army Corps of Engineers.

9.15. Storm Water Management.

- A. Adequate provision shall be made for the management of the quantity and quality of all storm water generated within the subdivision, and any drained ground water through a management system of swales, culverts, underdrains, storm drains and best management practices equivalent to those described in the *Stormwater Management for Maine: Best Management Practices*, published by the Maine Department of Environmental Protection, 1995. The storm water management system shall be designed to meet the following standards:
 1. Quantity.

Peak discharge rates shall be limited to the predevelopment levels for the 2-year, 10-year, and 25-year frequency, 24-hour duration storm unless storm water from the subdivision will drain directly into a major water body such as a great pond or the ocean.
 2. Quality.
 - a. Major Subdivisions.

Storm water run-off in major subdivisions must be treated by the use of best management practices equivalent to those described in the *Stormwater Management for Maine: Best Management Practices*, published by the Maine Department of Environmental Protection, 1995, to achieve, by design, 40% reduction in total suspended solids.
 - b. Minor Subdivisions.

Storm water run-off in minor subdivisions must be treated by the use of best management practices equivalent to those described in the *Stormwater Management for Maine: Best Management Practices*, published by the Maine Department of Environmental Protection, 1995, to achieve, by design, 15% reduction in total suspended solids.
- B. Where necessary to achieve the above standards, there shall be provided easements or drainage rights-of-way with swales, culverts, catch basins or other means of channeling surface water within the subdivision and over other properties. Wherever the storm drainage

system is not within the right-of-way of a public street, perpetual easements shall be provided to the municipality allowing maintenance and improvement of the system.

9.16 Reservation or Dedication and Maintenance of Open Space and Common Land, Facilities and Services.

- A. All open space common land, facilities and property shall be owned by:
1. The owners of the lots or dwelling units by means of a lot owners' association;
 2. An association which has as its principal purpose the conservation or preservation of land in essentially its natural condition; or
 3. The municipality.
- B. Further subdivision of the common land or open space and its use for other than non-commercial recreation, agriculture, or conservation purposes, except for easements for underground utilities, shall be prohibited. Structures and buildings accessory to non-commercial recreational or conservation uses may be erected on the common land. When open space is to be owned by an entity other than the municipality, there shall be a conservation easement deeded to the municipality prohibiting future development.
- C. The common land or open space shall be shown on the final plan with appropriate notations on the plan to indicate:
1. It shall not be used for future building lots; and
 2. Which portions of the open space, if any, may be dedicated for acceptance by the municipality.
- D. The final plan application shall include any and all covenants.

9.17 Phosphorus Impacts on Great Ponds.

The impact of any planned subdivision shall meet the requirements of the D.E.P. as defined in 30-A MRSA & 3003.

9.18 Minimum Lot Size

Unless connected to public sewer and water services, no subdivision shall be approved for residential or commercial use unless the final subdivision plan provides a minimum of 80,000 square feet of net residential acreage for each single family residence or principal use commercial structure. Multifamily development subdivisions not connected to public water and sewer services must provide a minimum of 80,000 square feet of net residential acreage for the first dwelling unit, plus 20,000 square feet of net residential acreage for each additional dwelling unit.

The Planning Board may approve final subdivision plans that provide for lot sizes of less than 80,000 square feet per single family residence or principal use commercial structure, without public sewer and water service ("cluster subdivisions"), provided that the following conditions are met:

(a) The final subdivision plan reserves or dedicates a portion of the land to be divided as open space or common land as provided in section 9.16 above; and

(b) The overall density of the approved final subdivision plan does not exceed one dwelling unit per 80,000 square feet of net residential acreage; and

(c) The minimum net residential acreage for each single family residence or principal use commercial structure, excluding reserved or dedicated open space or common land, shall be not less than 20,000 square feet.

(d) The Planning Board may, in its sole discretion, further reduce the minimum net residential acreage required for individually-owned single family residences in a cluster subdivision to not less than 12,000 square feet, excluding reserved or dedicated open space or common land, provided that:

- i. All lots in the subdivision concerned will be served by a DHS approved community water system and a common subsurface wastewater disposal system meeting all requirements of the Maine Subsurface Wastewater Disposal Rules, that eliminate the need for individual wells and wastewater disposal systems on each individual lot; and
- ii. Adequate provisions are made through recorded deed covenants, homeowners association agreements or other mutually enforceable instruments for ongoing operation, maintenance, repair and replacement of the community water system and common wastewater disposal system; and
- iii. The overall maximum density requirement of section 9.18(b) is not exceeded.

Cluster subdivisions approved under this alternative section 9.18(d) may include attached or semi-detached housing; zero side yard setback developments; or other innovative siting approaches, provided the Planning Board finds that the overall goals and purposes of this ordinance and the specific subdivision approval criteria under 30-A M.R.S.A. §. 4404 have been met.

ARTICLE 10 -DESIGN GUIDELINES

This article is intended to provide an example of design guidelines, which if followed will result in meeting the appropriate performance standards of Article 9. Compliance with these guidelines shall be considered evidence of meeting those standards. Proposed subdivisions not in compliance with the design guidelines of this article may be considered, but the applicant shall provide clear and convincing evidence that the proposed design will meet the performance standard(s) and the statutory criteria. In all instances the burden of proof shall be upon the applicant to present adequate information to indicate all performance standards and statutory criteria for approval have been or will be met.

10.1. Sufficient Water.

A. Well Construction.

1. Due to the increased chance of contamination from surface water, dug wells shall be prohibited on lots of smaller than one acre. On lots of less than one acre, the applicant shall prohibit dug wells by deed restrictions and a note on the plan.
2. Wells shall not be constructed within 100 feet of the legal right of way of any street, if located downhill from the street, or within 50 feet of the legal right of way of any street, if located uphill of the street. This restriction shall be included as a note on the plan and deed restriction to the effected lots.

B. Fire Protection.

1. A minimum storage capacity of 10,000 gallons shall be provided for a subdivision not served by a public water supply. Additional storage of 2,000 gallons per lot or principal building shall be provided. The Board may require additional storage capacity upon a recommendation from the fire chief based on his experience with the location. Where ponds are proposed for water storage, the capacity of the pond shall be calculated based on the lowest water level less an equivalent of three feet of ice.
2. Dry hydrants or other provisions for drafting water shall be provided to the specifications of the fire department. Minimum pipe size connecting dry hydrants to ponds or storage vaults shall be six inches, or as specified by the fire chief.
3. Where the dry hydrant or other water source is not within the right-of-way of a proposed or existing street, an easement to the municipality shall be provided to allow access. A suitable accessway to the hydrant or other water source shall be constructed and maintained.

10.2. Traffic Conditions.

A. Access Control.

1. The estimate of traffic that will be generated by the proposed subdivision shall not overburden the existing municipal roadway system.
Access design shall be based on the estimated volume using the access classification defined below. Traffic volume estimates shall be as defined in the *Trip Generation Manual*, 1991 edition, published by the Institute of Transportation Engineers.
 1. Low Volume Access: An access with 50 vehicle trips per day or less.
 2. Medium Volume Access: Any access with more than 50 vehicle trips per day but less than 200 peak hour vehicle trips per day.
 3. High Volume Access: Peak hour volume of 200 vehicle trips or greater.
 4. Width: Width of constructed roads shall be a minimum of 20' of hard surfaced or provide turnouts at specified locations designated by the Board where this is impractical due to physical conditions.

10.3 Monuments.

- A. Stone or precast concrete monuments shall be set at all corners and angle points of the subdivision boundaries where the interior angle of the subdivision boundaries is 135° or less.
- B. Stone or concrete monuments shall be a minimum of four inches square at the top and four feet in length, and set in the ground at final grade level. After they are set, drill hole 1/2 inch deep shall locate the point or points described above.
- C. All other subdivision boundary corners and angle points, as well as all lot boundary corners and angle points shall be marked by suitable monumentation, as required by the Maine Board of Registration of Land Surveyors.

ARTICLE 11 -WAIVERS

11.1 Waivers Authorized.

Where the Board makes written findings of fact that there are special circumstances of a particular parcel proposed to be subdivided, it may waive portions of the submission requirements, unless otherwise indicated in the regulations, provided the applicant has demonstrated that the performance standards of these regulations and the criteria of the subdivision statute have been or will be met, the public health, safety, and welfare are protected, and provided the waivers do not have the effect of nullifying the intent and purpose of any zoning ordinance, or these regulations.

11.2 Findings of Fact Required.

Where the Board makes written findings of fact that due to special circumstances of a particular lot proposed to be subdivided, the provision of certain required improvements is not requisite to provide for the public health, safety or welfare, or are inappropriate because of inadequate or lacking connecting facilities adjacent to or in proximity of the proposed subdivision, it may waive the requirement for such improvements, subject to appropriate conditions, provided the waivers do not have the effect of nullifying the intent and purpose of the comprehensive plan, the zoning ordinance, or these regulations, and further provided the performance standards of these regulations and the criteria of the subdivision statute have been or will be met by the proposed subdivision.

11.3 Conditions.

Waivers may only be granted in accordance with Sections 11.1 and 11.2. When granting waivers, the Board shall set conditions so that the purposes of these regulations are met.

11.4 Waivers to be shown on final plan.

When the Board grants a waiver to any of the improvements required by these regulations, the final plan, to be recorded at the Registry of Deeds, shall indicate the waivers granted and the date on which they were granted.

11.5 Limitations.

The Planning Board shall not waive improvement guarantees required under section 5.2.2 above, with respect to any major subdivision.

The Planning Board may waive fire protection design standards under sections 9.2.1 and 10.1(B) only as provided in section 9.2.1.

The Planning Board shall not waive road standards under section 9.5.1 above or traffic access and circulation standards under sections 9.5(B) and 10.2 above, unless approval of the waiver is recommended by the fire chief and a qualified traffic engineer engaged by the town for this purpose.

The Planning Board shall not waive the minimum lot size requirements of section 9.18, except as permitted in that section.

ARTICLE 12 -APPEALS

12.1 Appeals to Superior Court.

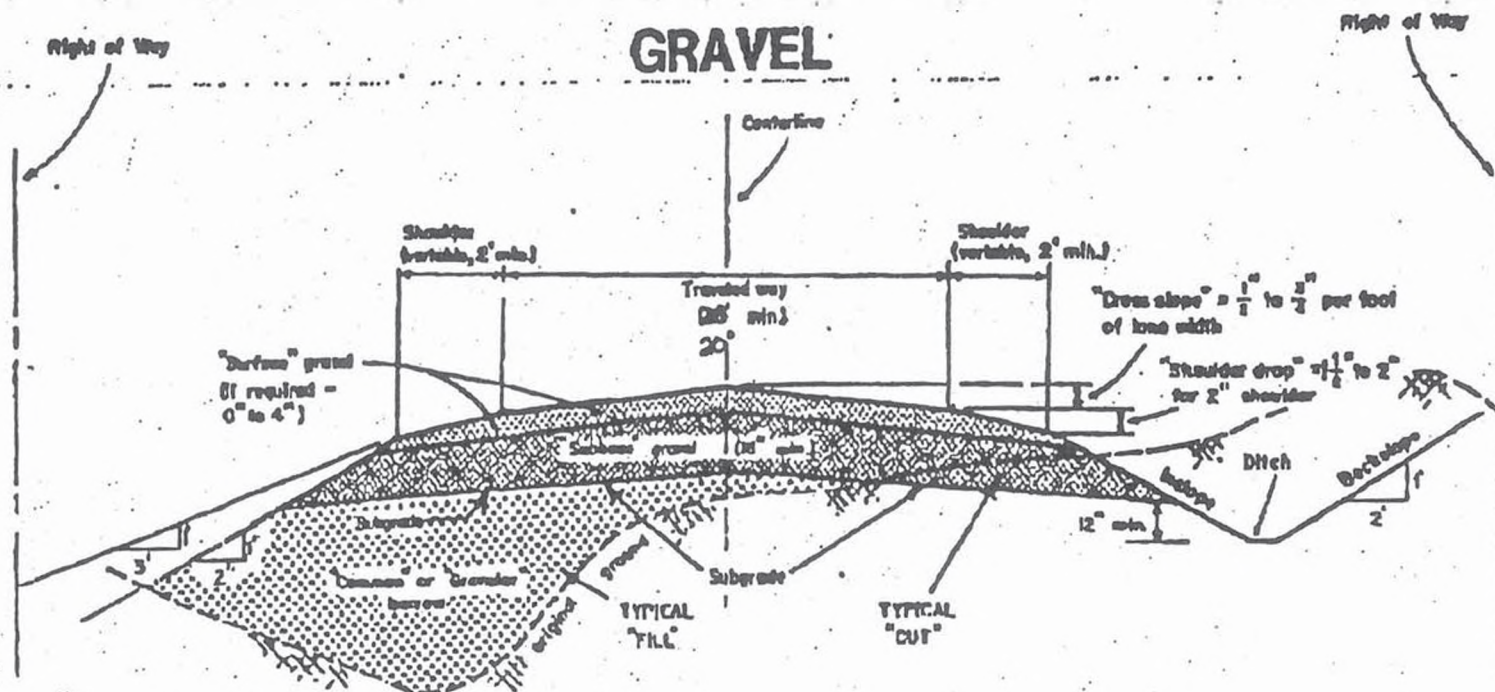
An aggrieved party may appeal any decision of the Board under these regulations to the Hancock County Superior Court, within thirty days of the date the Board issues a written order of its decision.

ARTICLE 13 –SEVERABILITY

13.1 Severability

If any portion of this Ordinance shall be held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance

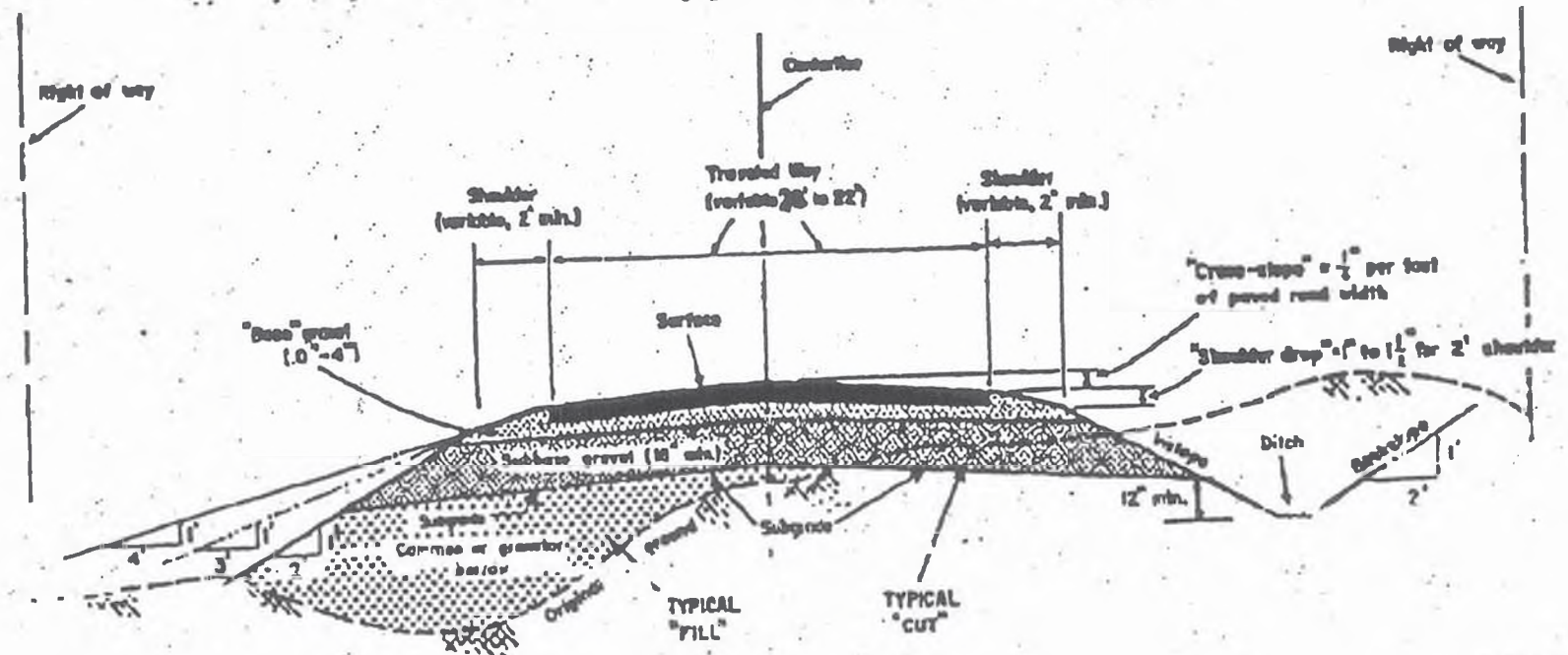
APPENDIX 1



DESIRABLE MINIMUM DIMENSIONS
OF A LOW-VOLUME GRAVEL ROAD

APPENDIX 2

PAVED



DESIRABLE MINIMUM DIMENSIONS
OF A LOW-VOLUME PAVED ROAD

Appendix 3

MINIMUM GRADING SPECIFICATIONS

- ♦ All travel lanes on gravel roads will be graded with a cross-slope of $\frac{1}{2}$ "-per-foot of lane width from centerline to shoulder (i.e. a 10 ft lane will have a crown of 5"). Shoulders will be lower and graded at a slightly steeper cross-slope to provide positive drainage toward the ditch.
- ♦ If possible, all slopes will be no steeper than 2:1 (horizontal to vertical) and all backslopes will be no steeper than 1:1.
- ♦ The depth of ditch should be at least 12" below the *bottom* of the roadway base gravel. If the depth of base gravel is unknown, then the ditch should be a minimum of 18" below the shoulder elevation. Care should be given to avoid excessively deep ditches which could create safety and liability concerns to motorists and/or pedestrians, especially with steep side slopes.
- ♦ All ditches will be shaped with no hard transitions in slopes. The shape should be rounded (parabolic) to minimize erosion and water velocities. V-ditches should be avoided.
- ♦ The grade of ditch flowlines should have a minimum of 1% and never be less than 0.5%.
- ♦ All potholes shall be undercut and not simply filled.
- ♦ No gravel or sod berm or windrow will be left in-between the road and the ditch slope.
- ♦ Prior to any grading, the Contractor or Town will call the Dig-Safe toll-free number 1-888-DIG SAFE (344-7233) to protect against possible damage. Comments like "I know there's nothing there" are not acceptable. The 72-hour waiting period will be adhered to in ALL CASES, except emergencies.
- ♦ SAFETY: All work will be protected by proper work zone devices and procedures. The standards presented in the latest edition of Part IV of the Manual on Uniform Traffic Control Devices (MUTCD) will serve as minimum standards.
- ♦ All culverts or obstructions will be flagged or marked prior to grading to ensure no damage to the culverts or equipment.
- ♦ All "ditch spoils" will be properly disposed of by the operator. If possible, an easement will be obtained to dump excavated material onto private property.
- ♦ Any ditch drainage onto private property will only occur after a drainage easement has been signed by the land/home owner.
- ♦ All work will be performed under the direction of the Code Enforcement Officer, with the advice of the Road Commissioner.
- ♦ Any inconvenience to residents or adjacent driveways shall be avoided by prior notification.
- ♦ All culverts, geotextiles and erosion control materials will be approved of and/or bought by the Town prior to placement.
- ♦ If regravelling a road, the "old" road surface will be crowned prior to any new gravel placement.
- ♦ All subbase gravel will meet standard MDOT Subbase Gravel specs for Type D. Maximum lifts of 9" will be placed and thoroughly compacted to 95% maximum density and shaped with the proper crown. Samples of all gravel may be obtained by the Town at any time to ensure quality and for periodic testing.

- ♦ All surface gravel should be a “tighter” consistency than the subbase gravel by containing more “fines” and meet the following gradation:

<u>Sieve Size</u>	<u>% Passing by Weight</u>
2”	95 - 100%
½”	30-65%
#200	7-12%

The gravel shall be properly shaped and compacted during placement. If the surface gravel is to be paved, then the gradation must be “cleaner” than the above spec and meet MDOT Standard Spec. 703.06 (a) - Type A.

- ♦ All unstable ditches and slopes will be properly protected against erosion according to current best management practices. Timely protection and proper materials will be primary considerations to proper erosion control.

MINIMUM SHOULDER/DITCHING SPECIFICATIONS

- ♦ Shoulders will be lower and graded at a slightly steeper cross-slope to provide positive drainage toward the ditch.
- ♦ If possible, all inslopes will be no steeper than 2:1 (Horizontal to Vertical) and all backslopes will be no steeper than 1:1.
- ♦ The depth of ditch should be at least 12" below the bottom of the roadway gravel. If the depth of base gravel is unknown then the ditch should be a minimum of 18" below the shoulder elevation. Care should be given to avoid excessively deep ditches which could create safety and liability concerns to motorists and/or pedestrians, especially with steep side slopes.
- ♦ All ditches will be shaped with no hard transitions in slopes. The shape should be rounded (parabolic) to minimize erosion and water velocities. V-ditches should be avoided.
- ♦ The slope of the graded ditch should be a minimum of 1%. In difficult situations, it should never be less than .5%.
- ♦ No gravel or sod berm or windrow will be left in-between the road and the ditch slope.
- ♦ Prior to any grading, the Contractor or Town will call Dig-Safe toll-free number 1-888-DIG SAFE (344-7233) to protect against possible damage. Comments like "I know there's nothing there" are not acceptable. The 72-hour waiting period will be adhered to in ALL CASES, except emergencies.
- ♦ **SAFETY:** All work will be protected by proper work zone devices and procedures. The standards presented in the latest edition of Part IV of the Manual on Uniform Traffic Control Devices (MUTCD) will serve as minimum standards.
- ♦ All culverts or obstructions will be flagged or marked prior to grading to ensure no damage to the culverts or equipment.
- ♦ All "ditch spoils" will be properly disposed of by the operator in accordance with all environmental considerations. An easement will be obtained to dump excavated material onto private property.
- ♦ Any ditch drainage onto private property can only occur after a drainage easement is on file with the Town.
- ♦ All work will be performed under the direction of the Code Enforcement Officer, with the advice of the Road Commissioner.
- ♦ Any inconveniences to residents or to adjacent driveways shall be avoided by prior notification.
- ♦ All culverts, geotextiles, and erosion control materials will be approved of and/or bought by the Town for use.
- ♦ All unstable ditches and slopes will be properly protected against erosion according to current best management practices and State law.

**TABLE 1
MINIMUM SURFACE DIMENSIONS OF
LOW VOLUME ROADS**

	GRAVEL SURFACE	PAVED SURFACE
TRAVEL LANE WIDTH	9 ft. (minimum)	9 to 11 ft.
SHOULDER WIDTH	Variable (2 ft. minimum)	Variable (2 ft. minimum)
CROWN	<ul style="list-style-type: none"> - Using "cross-slope" of 1/2 inch per foot of lane width (4%), Crown = 4 1/2 inch for a 9 foot lane. - Using "cross-slope" of 3/4 inch per foot of lane width (6%), Crown = 6 3/4 inch for a 9 foot lane. 	<p>Using "cross-slope" of 1/4 inch per foot of paved lane width (2%) Crown = 2 1/4 inch for 9 foot lane.</p>
SHOULDER DROP	<p>1 1/2 to 2 inch for 2 foot shoulder or 3 to 4 inch for 4 foot shoulder</p>	<p>1 to 1 1/2 inch for 2 foot shoulder or 2 to 3 inch for 4 foot shoulder</p>
SUPER ELEVATION (maximum)	<p>1 inch per foot of road width</p> <p>Ex: 22 inch for 22 foot road Ex: 24 inch for 24 foot road</p>	<p>1 inch per foot of road width</p> <p>Ex: 22 inch for 22 foot road Ex: 24 inch for 24 foot road</p>
		<p style="text-align: center;">-1989- MAINE LOCAL ROADS CENTER</p>

Town of Brooksville
Planning Board
Land Use & Subdivision Application Fee Schedule
& Penalties for Non-Conformance

1 APPLICATION FEE \$ 120.00 plus per sq. ft fee


2 The PER SQUARE FEET ADDER FEE is **fifteen cents (\$.15)**per square foot of useable space. On construction other than closed in structures the square footage will be calculated using the footprint of the requested construction.

3 DOCKS & FLOATS \$ 75.00 per


4 A PENALTY FEE of two times (2X) the normal total fee for after the fact applications.

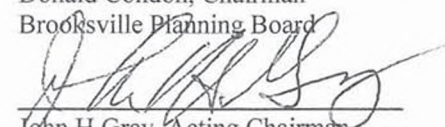
5 SUBDIVISION APPLICATION FEE - 3 to 7 Lots \$ 200.00 plus \$100.00 per lot
- 8 to 14 Lots \$ 400.00 plus \$150.00 per lot
- 15 + Lots \$ 600.00 plus \$200.00 per lot

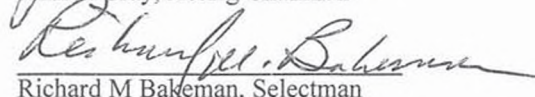
The Planning Board reserves the right to charge back to the applicant any unusual charges for legal or consultant fees associated with Subdivision Applications.



Amber Bakeman
Brooksville Town Clerk



Donald Conden, Chairman
Brooksville Planning Board


John H. Gray, Acting Chairman


Richard M Bakeman, Selectman
Brooksville Select Board

Dated : February 4, 2009 at Brooksville

APPROVED BY REFERENDUM VOTE ON TUESDAY, NOVEMBER 8, 2011

WIND ENERGY SYSTEMS ORDINANCE

TOWN OF BROOKSVILLE

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WIND ENERGY SYSTEMS ORDINANCE

TOWN OF BROOKSVILLE

Section 1: TITLE

This Ordinance shall be known as the "Wind Energy Systems Ordinance" of Brooksville, Maine (hereinafter referred to as the "ordinance").

Section 2: AUTHORITY

This Ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, §1 of the Maine Constitution (Municipal Home Rule), the provisions of 30-A MRSA §3001 (Home Rule), and the provisions of the Planning and Land Use Regulation Act, 30-A MRSA §4312, etc. seq. (*Comprehensive Planning and Regulation, or "Growth Management Act"*) and 30-A MRSA §4452 ("Enforcement of Land Use Laws and Ordinances").

Section 3: PURPOSE

The purpose of this ordinance is to enable the responsible utilization of wind power, while ensuring personal and public health and safety, protecting the environment, preserving private property rights, and protecting the value of property in the vicinity of wind power installations.

To accomplish this purpose, the ordinance requires those who wish to install a wind energy facility to meet certain application requirements, which are detailed in Section 5 below. In summary, there are two processes: one for applicants wishing to construct a facility with a generator capacity greater than 3kW who must meet all of these requirements, and one for applicants seeking to install a system with a generator capacity of 3kW or less who may follow a streamlined process. In both cases, waivers for all requirements except maximum output power, maximum height, minimum setback, and maximum noise level may be requested.

Section 4: REVIEW AND APPROVAL AUTHORITY

4.1 No new wind energy system and no alteration, expansion or reconstruction of an existing wind energy system, for either residential or commercial use, shall be constructed without the owner or operator first obtaining a permit from the CEO and/or the Planning Board pursuant to this ordinance.

4.1.1 Approval by the CEO is required for construction of a new wind energy facility, and for expansion or reconstruction of an existing facility, with an output power less than 3kW.

4.1.2 Approval by the Planning Board is required for construction of a new wind energy facility, and for expansion or reconstruction of an existing facility, with an output power of 3kW or more to the maximum allowed of 50kW.

4.2 All approvals shall expire within one (1) year of the date of issuance unless work there under is substantially completed. If work is not substantially completed within one (1) year, a new application must be made.

Section 5: APPLICATION PROCESS AND PROCEDURE

5.1 Pre-Application Conference

All persons seeking approval of the CEO and/or the Planning Board under this ordinance shall meet with the CEO no less than thirty (30) days before filing an application. At this meeting the CEO shall explain to the applicant the ordinance provisions as well as the application forms and submissions that will be required under this ordinance and discuss whether any of the requirements may be waived (see Section 6).

5.2 Application Submission Requirements

All persons seeking approval of the CEO or the Planning Board under this ordinance shall submit an application which includes the following information:

5.2.1 Documentation of the applicant's right, title or interest in the property on which the facility is to be sited, including the name and address of the property owner and the applicant.

5.2.2 List of names, addresses, tax map with location of proposed tower marked, and lot number of all property owners abutting the applicant's property.

5.2.3 A USGS quadrangle map, sized to 8½"x 11", of the property on which the wind energy system is proposed, with the general area cross-hatched or otherwise demarcated.

5.2.4 A project description, which includes specific information on the type, size, tower type and height, rotor material and diameter, the rated power output, performance, safety and noise, and the manufacturer and model number of the wind energy system.

5.2.5 A site plan of the subject property showing the planned location of the wind energy system as well as the location of and distance in feet to:

- (a) setback line
- (b) adjacent property lines
- (c) all roads and driveways
- (d) easements
- (e) rights of way

- (f) habitable structures
- (g) utility lines
- (h) great ponds, streams and all wetlands
- (i) proposed access roads
- (j) significant wildlife habitat (as defined in Title 38 MRSA Sec. 480B(10))
- (k) erosion control (as outlined in the Maine Erosion and Sediment Control Law, Title 38 MRSA Sec. 420-C)
- (l) all other structures

5.2.6 Documentation of the pre-construction ambient low-level sound (dbC) measurements at the wind energy system owner's property boundaries performed by a properly credentialed professional at the applicant's expense. This requirement may not be waived for a wind energy system greater than 3kW.

5.2.7 If a connection to the publicly regulated utility grid is proposed, a copy of the contract between applicant and utility verifying that the proposed connection is acceptable, and/or other evidence making clear that the utility is aware of the proposed connection and finds it acceptable.

5.2.8 For a wind energy facility with a generator capacity of 10kW to 50kW, a sample form of a surety (bond), to be approved by the Planning Board, in an amount sufficient to cover the costs of site improvements and the costs of removal should the facility be abandoned or uncompleted in accordance with Section 10. That bond shall specify that the municipality shall be notified by the bonding agent of any cancellation or reduction of the surety. The Planning Board shall specify how much of the surety is allocated to completion of the facility and how much to removal of an abandoned or uncompleted facility. It is a condition of approval that a certified copy of the actual surety-bond be filed with the Town within forty-five (45) days of approval.

5.2.9 For a wind energy facility planned with community participation, the applicant must demonstrate that substantial community benefits will accrue to the town as a result of the construction and operation of the facility. In addition to any other demonstration of community benefits, including significant tangible benefits provided for in a community benefits agreement entered into by the applicant and the town, the applicant must identify the tax value, direct payments or other financial benefits to be realized and the form and duration of such benefits, the short-term and long-term jobs to be created, and the telecommunication infrastructure enhancements or other economic benefits to be realized and the duration of such benefits.

5.2.10 The Planning Board may require scenic information for a wind energy system consisting of one or more of the following:

- (a) A visual analysis composed of elevation drawings of the proposed wind energy system and any other proposed structures, showing height above ground level. The analysis shall also indicate the color

treatment of the system's components and any visual screening incorporated into the site that is intended to lessen the system's visual prominence.

(b) A landscaping plan indicating the proposed placement of the facility on the site; location of existing trees and other significant site features; and the method of fencing, if any.

(c) A narrative discussing the extent to which the wind energy system would be visible from a designated scenic resource, the tree line elevation of vegetation within two thousand (2,000) feet and the distance to the proposed facility from the designated scenic resource's noted viewpoints as identified in the Brooksville Comprehensive Plan or other ordinances.

(d) A graphic mock-up of the proposed system from the four directions: North, South, East, West.

5.3 Application Procedure for Planning Board Approval

5.3.1 Seven (7) copies of the application shall be filed with the CEO at least two (2) weeks prior to the scheduled Planning Board meeting for review. The application shall be accompanied by the permit application fee (Section 7.1). Within forty-five (45) days of the filing of an application, the Planning Board shall review the application and determine if the application meets the submission requirements. The CEO and the Planning Board shall review any requests for a waiver from the submission requirements submitted pursuant to Section 6 and shall act on these requests prior to determining the completeness of the application.

5.3.2 If the application is complete, the CEO shall notify the applicant in writing of this determination. If the application is incomplete, the CEO shall notify the applicant in writing, specifying the additional materials or information required to complete the application.

5.3.3 The Planning Board shall hold a public hearing within thirty (30) days of the date on the notice from the CEO to the applicant that the application was deemed complete. The Planning Board shall publish the time, date and place of the hearing at least one (1) time at least seven (7) days prior to the hearing in a newspaper of area-wide circulation. Abutting property owners shall be notified by registered mail by the Town of the hearing. Failure on the part of any abutter to receive such notice shall not be grounds for delay of any consideration of the application nor denial of the project.

5.4 Planning Board Decision

Within thirty (30) days of the public hearing, or within another time limit as may be otherwise mutually agreed upon by the Planning Board and the applicant, the Board

shall approve, approve with conditions or deny the application in writing, together with the findings on which that decision is based.

Section 6: SUBMISSION WAIVER

The CEO and/or the Planning Board may waive any of the submission requirements in Section 5 based upon a written request of the applicant submitted at the time of application. A waiver of any submission requirement may be granted only if the CEO and/or the Planning Board find in writing that due to special circumstances of the application the information is not required to determine compliance with the standards of this ordinance.

Section 7: FEES

7.1 Application Fee. An application for CEO and/or for Planning Board approval shall include payment of an application fee of one hundred dollars (\$100) for a wind energy system under 3kW and two hundred fifty dollars (\$250) for a wind energy system 3kW up to 50kW. The application shall not be considered complete until this fee is paid.

7.2 Site Visit Fee. The application fee covers two site visits by the CEO. In the event that additional visits are required to ensure compliance with the application and construction process, there will be a charge of seventy-five dollars (\$75) per visit payable within fifteen (15) days of the visit.

7.3 Planning Board Review Fee. In addition to the application fee required under Section 7.1 above, the Planning Board may require an applicant to deposit, in advance, with the Town Treasurer, a sum determined by the Planning Board to be sufficient to reimburse all outside costs to be incurred by the Planning Board in its review of the application. Such costs may include, but are not limited to, costs of professional surveying, engineering and legal assistance as needed by the Planning Board pursuant to their review of the application. The purpose of such outside services shall be to provide independent technical advice to the Planning Board when, in the opinion of the Planning Board, the public interest or issues raised by the application may require it. In the event the Planning Board's actual outside review costs exceed the initial cost estimate, the Planning Board will require the applicant to deposit additional funds with the Town Treasurer. All funds shall be deposited in a non-interest bearing escrow account and any portion not used shall be returned to the applicant within thirty (30) days of the Planning Board's decision.

Section 8: AMENDMENT TO AN APPROVED APPLICATION

Any changes to an approved application must be approved by the CEO and/or the Planning Board, in accordance with Section 4. If there is a transfer of ownership before or during the building phase, the new owner shall meet with the CEO and/or the Planning Board.

Section 9: APPROVAL STANDARDS

An application for approval by the CEO and/or the Planning Board under Section 4 must meet the following standards.

9.1 Output Power. The maximum nameplate capacity of a new wind energy system shall be 50kW. This section is not subject to waiver.

9.2 Height. A new wind energy system shall have a maximum tower height of 100 (one hundred) feet. This section is not subject to waiver.

9.3 Setback. The tower of a new wind energy system shall be set back from all adjoining property lines, roads, easements and rights-of-way, except the wind energy systems direct access road, a minimum distance equal to one and one-half (1½) times the maximum height of the tower and blade height (when blades at the highest point in their arc) as measured from the ground. This section is not subject to waiver.

9.4 Sound levels

9.4.1 A new wind energy system shall not exceed 35dBA for any continuous five (5) minute period as measured anywhere beyond the property boundaries of the wind energy system's owner/operator or on the adjoining properties, including the adjoining property lines and habitable structures, except during short-term (12 hours or less) weather events, even if mitigation waivers are in effect for these adjoining properties. This section is not subject to waiver.

9.4.2 A new wind energy system shall emit no additional dBC (low level) sounds beyond the property boundaries of the wind energy system's owner/operator at any time. (See Section 5.2.6)

9.5 Design

9.5.1 The guy wires of a tower shall have safety-covered sheeting or rigging cable covers for a minimum of fifteen (15) feet above the ground.

9.5.2 The WES shall be equipped with both manual and automatic over-speed controls.

9.5.3 The WES shall be designed, sited and constructed to prevent the disruption or loss of emergency or private radio, telephone, television, internet connections or similar signals beyond the site. If it is demonstrated that the system is causing interference with such communications, the system operator shall promptly eliminate the interference or cease operation of the system.

9.5.4 The WES shall be designed and installed such that unauthorized public access via step bolts or a ladder is prevented for a minimum of fifteen (15) feet above the ground.

9.5.5 The WES shall have a non-visually reflective surface to minimize any visual disruptions.

9.5.6 All on-site electrical wires associated with the WES shall be installed underground except for 'tie-ins' to any public utility company transmission poles, towers and lines. This standard may be modified if the project terrain is determined to be unsuitable for underground installation.

9.5.7 The WES shall not be lighted unless required by the FAA.

9.5.8 The WES shall not display any permanent or temporary signs, writing, symbols, logos or any graphic representation of any kind except for signs at ground level identifying the turbine manufacturer, the owner/operator, emergency contact information, and appropriate warnings as required by national, state, and local laws.

9.5.9 The WES shall have an automatic braking, governing or feathering system to prevent uncontrolled rotation and a manual service disconnect within reach of the ground.

9.6.10 Shadow flicker shall be limited to the facility property at all times.

9.5.11 The minimum distance between the ground and between a structure's roof and any moving part of a new WES shall be fifteen (15) feet and eight (8) feet, respectively.

Section 10: ABANDONED OR UNCOMPLETED FACILITIES

10.1 Abandoned Facilities. A wind energy system facility which is not generating electricity for a continuous period of twelve (12) months shall be considered abandoned. The CEO shall notify the owner of an abandoned facility in writing and order the removal of the facility within ninety (90) days of receipt of the written notice. The owner of the facility shall have thirty (30) days from the receipt of the notice to demonstrate to the CEO that the facility has not been abandoned. If the owner fails to do so, the owner shall have sixty (60) days to remove the facility. If the facility is not removed within this time period, the municipality may remove the facility at the facility owner's expense, the cost of which shall first come from any surety or bond in favor the municipality under Section 5.2.8.

10.2 Uncompleted Facilities. A wind energy system facility which does not contain all lot improvements and landscaping in accordance required under this ordinance by the time it goes into operation shall be considered uncompleted. The CEO shall notify the owner of the facility in writing and order the completion of said facility within ninety (90) days of receipt of the written notice. If the facility is not completed within this time period, the municipality may undertake all uncompleted lot improvements and landscaping at the owner's expense, the cost of which shall first come from any surety bond in favor of the municipality under Section 5.2.8.

10.3 Release of Surety/Bond. Upon removal of the wind energy system facility or the completion of said facility, as the case may be, the facility owner may apply to

the Planning Board for release of a part or all of the surety bond. The request shall not be unreasonably withheld so long as the facility has been removed or completed to the satisfaction of the Planning Board.

Section 11: APPEALS

Any appeal by any aggrieved party with standing from any decision of the CEO or the Planning Board to approve, approve with conditions or deny any application made under this ordinance, including any enforcement action or inaction alleged under Section 12 of this ordinance, shall be to the Superior Court in accordance with Rule 80(B) of the Maine Rules of Civil Procedure, said appeal to be filed within thirty (30) days of the written decision, action or failure or refusal to take action complained of.

Section 12: ENFORCEMENT

12.1 Any violation of this ordinance shall be deemed to be a nuisance.

12.2 The CEO, as appointed by the Board of Selectmen, shall enforce this ordinance. If the CEO finds that any provision of this ordinance has been violated, the CEO shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. The CEO may take any other legal action to ensure compliance with this ordinance.

12.3 Upon complaint of any neighboring resident affected by the wind energy system's sounds, ambient and maximum permitted sound measurements shall be performed by an agent designated by the CEO or the Planning Board. The agent's report shall be submitted to the Planning Board for review. The fee for this service shall be paid by the complainant unless the maximum permitted decibel level has been exceeded, in which case, the Town shall pay the fee. The current owner of the system shall correct the violation and reimburse the Town for the fee for the noise level measurements within thirty (30) days of notice by the CEO. If the maximum decibel reading anywhere on the complainant's property is exceeded, the installation shall be considered a nuisance and must be corrected within ninety (90) days from notification of the violation and, if the violation cannot be corrected, the wind energy system shall be removed or re-located.

12.4 The Board of Selectmen is authorized to enter into administrative consent agreements for the purpose of eliminating violations of this ordinance and recovering fines without court action. Such agreements shall not allow a violation of this ordinance to continue unless there is clear and convincing evidence that the violation occurred as a direct result of erroneous advice given by an authorized municipal official upon which the applicant reasonably relied to its detriment and there is no evidence that the owner acted in bad faith and/or that the removal of the violation will result in a threat to public health and safety or substantial environmental damage.

Section 13: PENALTIES

Any person or company that owns or controls any building or property connected with a wind energy system that violates this ordinance shall be liable for civil penalties in accordance with Title 30-A MRSA §4452. Each day such a violation continues after notification by the CEO shall constitute a separate offense. Each offense shall be subject to civil penalties, orders to correct violations and attorney and expert witness fees in accord with Title 30-A MRSA §4452. (See Section 12.)

Section 14: CONFLICT AND SEVERABILITY

14.1 Conflicts. Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or of any other ordinance, regulation or statute administered by the municipality, the more restrictive provision shall apply.

14.2 Severability. The invalidity of any part of this ordinance shall not invalidate any other part of this ordinance.

Section 15: EFFECTIVE DATE

This ordinance becomes effective immediately upon passage by the Town.

Section 16: DEFINITIONS

Ambient sound: All sound present in a given environment, which is a composite of sounds from many sources, near and far, intermittent and steady, including the wind system facility once it is constructed and operating.

Applicant: The legal entity, including successors and assigns, applying for a permit under this ordinance.

dB (decibel): A measurement of sound level, L . L is defined in decibels (dB) as $L = 20 \log_{10} (P_{rms}/P_0)$ dB, where P_{rms} is the root-mean-square pressure of the sound measured in Pascals (Pa), and P_0 is the reference threshold of human hearing (2×10^{-5} Pa or 20 μ Pa).

dBA: The accepted unit of measurement for environmental sound pressure determinations. When the total sound pressure is integrated over the entire audible spectrum, a weighting factor is used which de-emphasizes both low and high frequencies. The formulas for this correction may be found in ANSI standard publications, and such corrections are built into most instruments used in field measurement. (Note: Measurement equipment should be calibrated for both dBA and dBC measurements and corrected and interpreted using NIOSH Method #2. The latter is defined in: Berger, E. H. (1980), *Sound Vibration* 14(1), 6-7.) While this measure is the commonly used standard, it may not adequately account for the low frequency noise produced by wind turbines.

dBC: The measure of ambient sound pressure and the integral of P_{rms} weighted by a function that is essentially flat over the audible range of frequencies.

Guy wire: A tensioned cable between the tower and the ground or other surface for lateral support.

Height: The vertical measurement of the tower from the base of the tower to the top of the tower.

kW: Power expressed in kilowatts.

Lot: A parcel of land undivided by any street or public road.

Nameplate capacity: The electrical power rating of an individual wind turbine, as certified by the turbine manufacturer, normally expressed in watts, kilowatts (kW), or megawatts (MW).

Properly credentialed professional: A professional acoustical engineer who is a member of the Institute of Noise Control Engineering (INCE) or who possesses some comparable qualification.

Scenic resource: Either a scenic resource of state or national significance, as defined in 35-A MRSA §3451(9) or a scenic resource of local significance located within the municipality and identified as such in a comprehensive plan, open space plan or scenic inventory adopted by the municipal legislative body.

Shadow flicker: Alternating changes in light intensity caused by the rotating elements of a wind energy facility.

Short-term weather event: Any storm lasting twelve (12) hours or less.

Structure: Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind.

Tower: The free-standing or guy-wired structure on which a wind energy conversion system is mounted.

Turbine: A rotating device used to convert the physical energy exerted by wind passing across its blades into electrical energy.

Wind energy facility (WEF) or system (WES): All equipment, structures, roads and power lines that together form a system for the production of electrical power using ambient wind as the source of motive power.

Wind turbine: The blades, rotor, and associated mechanical and electrical conversion components including the supporting tower.

Adopted at STM on January 27, 2011

WIND POWER DEVELOPMENT MORATORIUM ORDINANCE

TOWN OF BROOKSVILLE

The TOWN OF BROOKSVILLE (Maine) adopts a Wind Power Development Moratorium Ordinance as follows:

FOR THE PURPOSES of this moratorium ordinance, "wind power development" means any wind energy facility consisting of one or more wind turbines, the primary purpose of which is to generate electricity, and includes substations, cable/wires and other structures accessory to such facility.

WHEREAS, areas of the Town of Brooksville could be under threat of development pressure from wind power developments; and

WHEREAS, this development pressure was unanticipated and has not been adequately provided for in the Town's current ordinances; and

WHEREAS, there is a strong likelihood that all areas of the Town may be subjected to this development pressure due to the amount of undeveloped land, the nonexistence of any regulations or restrictions on locations of wind power developments and the demand for such wind power developments; and

WHEREAS, development of such wind power developments could pose serious threats to the public health, safety and welfare of the residents of Brooksville through the over-development of parts of Town with such wind power developments without adequate provisions for issues of safety, land-use compatibility and visual access to view corridors; and

WHEREAS, the Town will need at least 180 days to develop and implement a Wind Turbine Ordinance, and the necessary amendments to land-use ordinances and regulations to accommodate these wind power development pressures; and

WHEREAS, in the judgment of the Town, these facts create an emergency within the meaning of 30-A M.R.S.A. 4356 (1)(B) and require the following Wind Power Development Moratorium Ordinance as immediately necessary for the preservation of the public health, safety and welfare;

NOW, THEREFORE, the Town of Brooksville hereby ordains that a Wind Power Development Moratorium Ordinance is hereby imposed, effective immediately, and applicable to the maximum extent permitted by law and subject to the severability clause below, to all proceedings, applications and petitions not pending (within the meaning of M.R.S.A. Sec. 302) as of January 27, 2011, and on any new construction or use, requiring approval under the terms of the Town's land-use ordinances and regulations for such Town until the effective date of the necessary amendments to the land-use ordinances and regulations or until July 28, 2011;

BE IT FURTHER ORDAINED, that the Planning Board, Board of Appeals, Code Enforcement Officer, all Town agencies and all Town employees shall neither accept nor approve applications, plans, permits, licenses and/or fees for any construction or uses governed by this Wind Power Development Moratorium Ordinance for such wind power developments for said period of time;

BE IT FURTHER ORDAINED, that those provisions of the Town's land-use ordinances and regulations which are inconsistent or conflicting with the provisions of this Wind Power Development Moratorium Ordinance, including, without limitation, the requirements for site-plan review by the Planning Board, subdivision and/or special exception review by the Planning Board, and height variance appeals by the Board of Appeals, are hereby repealed to the extent that they are applicable for the duration of the Wind Power Development Moratorium Ordinance hereby ordained, but not otherwise;

BE IT FURTHER ORDAINED, that to the extent any provision of the Wind Power Development Moratorium Ordinance is deemed invalid by a court of competent jurisdiction, the balance of the Wind Power Development Moratorium Ordinance shall remain valid.

BE IT FURTHER ORDAINED, that a Brooksville Wind Power Development Ordinance will require a public hearing by the Planning Board and the Board of Selectmen, and must be voted upon at a Town Meeting or Special Town Meeting.

EMERGENCY CLAUSE:

In view of the emergency cited in the preamble, this Wind Power Development Moratorium Ordinance shall take effect immediately upon passage by the Town and shall apply, to the maximum extent permitted by the law but subject to the severance clause above, to all proceedings, applications and petitions not pending as of January 27, 2011, and shall stand repealed as of July 28, 2011.

WIRELESS COMMUNICATIONS FACILITIES ORDINANCE
TOWN OF BROOKSVILLE

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WIRELESS COMMUNICATIONS FACILITIES ORDINANCE

TOWN OF BROOKSVILLE

Section 1: TITLE

This Ordinance shall be known and cited as the "Wireless Communications Facilities Ordinance" of Brooksville, Maine (hereinafter referred to as the "ordinance").

Section 2: AUTHORITY

This ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section 1 of the Maine Constitution (Municipal Home Rule); the provisions of Title 30-A MRSA Section 3001 (Home Rule); and the provisions of the Planning and Land Use Regulation Act, Title 30-A MRSA Section 4312 *et seq.*, and 30-A MRSA Section 4452 ('Enforcement and Land Use Laws and Ordinances').

Section 3: PURPOSE

The purpose of this ordinance is to provide a process and a set of standards for wireless communications facilities in order to:

- Implement a municipal policy concerning the provision of wireless communications services and the siting of their facilities,
- Establish clear guidelines, standards and time frames for the Town to regulate wireless communications facilities,
- Allow competition in wireless communications service,
- Encourage the provision of advanced wireless communications services to the largest number of businesses, institutions and residents of Brooksville,
- Permit and manage reasonable access to the public rights of way of Brooksville for wireless communications purposes on a competitively neutral basis,
- Ensure that all entities providing wireless communication service facilities and services within Brooksville comply with the Town's ordinances,
- Ensure that Brooksville can continue fairly and responsibly to protect the public health, safety and welfare of its citizens,
- Encourage the co-location of wireless communications facilities, thus helping to minimize adverse impacts and to protect the visual character of the Town of Brooksville,

--Enable Brooksville to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development,

--Further the goals and policies of Brooksville's comprehensive plan, while promoting orderly development of the town with minimal impacts on existing uses, and

--Protect the scenic and visual character of the community.

Section 4: APPLICABILITY

This local land use ordinance applies to all construction, expansion and reconstruction of wireless communications facilities, existing or proposed, except as provided below:

- 1) Emergency wireless communications facility: A temporary wireless communication facility for emergency communications by public officials or agencies.
- 2) Amateur (ham) radio station: An amateur (ham) radio station licensed by the Federal Communications Commission (FCC) provided that it is not more than fifty (50) feet in height.
- 3) Parabolic antenna: A parabolic antenna less than seven (7) feet in diameter and not more than fifty (50) feet in height which is an accessory use of the property.
- 4) Maintenance or repair: Maintenance or repair of a wireless communications facility and related equipment, provided that there is no change in the height or any other dimension of the facility.
- 5) Temporary wireless communications facility: A temporary wireless communications facility in operation for a maximum period of thirty (30) days.
- 6) Antenna as accessory use: An antenna that is an accessory use to a residential dwelling unit, provided that it does not exceed fifty (50) feet in height.

Section 5: REVIEW AND APPROVAL AUTHORITY

No person shall construct or expand a wireless communications facility without approval of the CEO and Planning Board as follows:

5.1. New construction. Approval by the Planning Board is required for construction of a new wireless communications facility.

5.2 Expansion of an existing facility. Approval by the CEO is required for expansion of an existing wireless communication facility.

5.3 Reconstruction of an existing facility.

5.3.1 Non-conforming: A non-conforming wireless communications facility, removed or destroyed for any reason, may be reconstructed on the same site, provided that it complies with the maximum height restriction in section 7.3 and does not make the facility any more non-conforming.

5.3.2 Conforming: A conforming wireless communications facility, removed or destroyed for any reason, may be reconstructed on the same site, provided there is no change in the height or any other dimension of the facility that would noticeably alter the physical character of the facility.

5.3.3 Written notification to the Planning Board is required for reconstruction of an existing wireless communication facility. A surety (bond) consistent with Section 6.3.11 shall be submitted for approval with that written notification to the Planning Board before any reconstruction begins. Reconstruction is allowed only within one year of the damage or removal of the existing facility.

5.4 Expiration of approved applications. All approvals shall expire within one (1) year of the date of issuance unless work there under is substantially completed. If work is not substantially completed within one (1) year, a new application must be made.

Section 6: APPLICATION PROCESS

6.1 Pre-Application Conference

All persons seeking approval of the CEO or the Planning Board under this ordinance shall meet with the CEO no less than thirty (30) days before filing an application. At this meeting the CEO shall explain to the applicant the ordinance provisions as well as the application forms and submissions that will be required under this ordinance.

6.2 General Rules for All Applications

All persons seeking approval of the CEO or the Planning Board under this ordinance shall submit an application which includes the following information:

6.2.1 Documentation of the applicant's right, title or interest in the property on which the facility is to be sited, including the name and address of the property owner and the applicant.

6.2.2 A copy of the FCC license for the facility, or a signed statement from the owner or operator of the facility, attesting that the facility complies with current FCC regulations, including standards for radio emissions.

6.2.3 Identification of districts, sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800).

6.2.4 Location map and elevation drawings of the proposed facility and any other proposed structures showing color and identifying structural materials.

6.2.5 List of names, addresses, tax map and lot number of all property owners within ½ (one-half) mile radius of the proposed structure.

6.2.6 A signed statement that the owner of the facility, and his/her successors and assigns, agree to:

- (i) respond in a comprehensive manner within 30 days to a request for information from a potential co-location applicant,
- (ii) negotiate in good faith for shared use by third parties,
- (iii) allow shared use if an applicant agrees in writing to pay reasonable charges for co-location,
- (iv) require no more than a reasonable charge for shared use, based on community rates and generally accepted accounting principles. This charge may include but is not limited to a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction and maintenance, financing, return on equity, depreciation and all of the costs of adopting the tower or equipment to accommodate a shared user without causing electromagnetic interference.

The CEO or Planning Board may request documentation to substantiate any co-location charges imposed by the party whose facility is the site of the proposed co-location. Any documentation provided as substantiation would be considered confidential and would not be made public or shared with any party other than the CEO or Planning Board.

6.3 Planning Board Application Requirements (new construction)

In addition to the general rules of Section 6.2, the application shall include the following information:

6.3.1 A USGS 7.5 minute topographic map showing the location of all Structures and wireless communications facilities above 150 feet in height above ground level, except antennas located on roof tops, within a five (5) mile radius of the proposed facility unless this information has been previously made available to the municipality. This requirement may be met by submitting current information (within thirty days of the date the application is filed) from the FCC Tower Registration Database.

6.3.2 A site plan prepared and certified by a professional engineer registered in the State of Maine, indicating the location, type and height of the proposed facility, antenna capacity, on-site and abutting off-site land uses, means of access, setbacks from property lines, and all applicable American National Standards Institute (ANSI) technical and structural codes.

6.3.3 A boundary survey for the project performed by a land surveyor licensed by the State of Maine.

6.3.4 A visual assessment, consisting of the following:

(i) Elevation drawings of the proposed facility, and any other proposed structures, showing height above ground level.

(ii) Landscaping plan indicating the proposed placement of the facility on the site; location of existing structures, trees and other significant site features; the type and location of plants proposed to screen the facility; the method of fencing, the color of the structure, and the proposed lighting method.

(iii) Photo simulations of the proposed facility taken from perspectives determined by the CEO. Each photo must be labeled with the line of sight, elevation, and with the date taken imprinted on the photograph. The photos shall show the color of the facility and method of screening.

6.3.5 A narrative which includes:

(i) The extent to which the proposed facility would be visible from a designated scenic resource,

(ii) The distance to the proposed facility from the noted viewpoints of a designated scenic resource.

6.3.6 A drawing showing the fields of coverage of present wireless communication facilities and the area proposed to be covered by the applicant.

6.3.7 A written description of how the proposed facility fits into the applicant's communications network. This submission does not require disclosure of confidential business information.

6.3.8 Evidence demonstrating that no existing building, site or structure can accommodate the applicant's proposed facility. Such evidence may consist of any one or more of the following:

- (i) Evidence that no existing facilities are located within the targeted market coverage area which meet the applicant's engineering requirements.

- ii) Evidence that existing facilities do not have sufficient height or cannot be increased in height at a reasonable cost or without exceeding one hundred, ninety (190) feet to meet the applicant's engineering requirements.

- iii) Evidence that existing facilities do not have sufficient structural strength to support applicant's proposed antenna and related equipment. Specifically:

- (a) The applicant's proposed equipment would exceed the structural capacity of the existing facility, considering the existing and planned use of those facilities, and these existing facilities cannot be re-inforced to accommodate the new equipment.

- (b) The applicant's proposed antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna or equipment on the existing facility would cause interference with the applicant's proposed antenna.

- (c) Existing or approved facilities do not have space on which equipment can be placed so it will function effectively.

- (d) The fees, costs or contractual provisions required by the owner in order to share or adapt an existing facility are unreasonable and/or the costs exceeding the pro rata share of a new facility are presumed to be unreasonable.

6.3.9 Evidence that the applicant has made diligent good faith efforts to negotiate co-location on an existing facility, building or structure and has been denied access.

6.3.10 Written agreement that the applicant will certify compliance with all applicable FCC radio frequency emissions regulations within thirty (30) days of a request from the Town.

6.3.11 A sample form of a surety (bond), to be approved by the Planning Board, in an amount sufficient to cover the costs of site improvements and the costs of removal should the facility be abandoned or uncompleted in accordance with Section 12. That bond shall specify that the municipality shall be notified by the bonding agent of any cancellation or reduction of the surety. The Planning Board shall specify how much of the surety is allocated to completion of the facility and how much to removal of an abandoned or uncompleted facility. It is a condition of approval that a certified copy of the actual surety-bond be filed with the Town within forty-five (45) days of approval.

6.4 Application Procedure for Planning Board Approval

6.4.1 Seven (7) copies of the application shall be filed with the CEO at least two (2) weeks prior to the scheduled Planning Board meeting for review. The application shall be accompanied by the permit application fee (Section 10.1). Within forty-five (45) days of the filing of an application, the Planning Board shall review the application and determine if the application meets the submission requirements. The CEO and the Planning Board shall review any requests for a waiver from the submission requirements submitted pursuant to Section 9 and shall act on these requests prior to determining the completeness of the application.

6.4.2 If the application is complete, the CEO shall notify the applicant in writing of this determination. If the application is incomplete, the CEO shall notify the applicant in writing, specifying the additional materials or information required to complete the application.

6.4.3 The Planning Board shall hold a public hearing within thirty (30) days of the date on the notice from the CEO to the applicant that the application was deemed complete. The Planning Board shall publish the time, date and place of the hearing at least one (1) time at least seven (7) days prior to the hearing in a newspaper of area-wide circulation. Property owners within one-half (1/2) mile radius shall be notified by mail by the Planning Board of the hearing. Failure on the part of any abutter to receive such notice shall not be grounds for delay of any consideration of the application nor denial of the project.

6.5 Planning Board Decision

Within thirty (30) days of the public hearing, or within another time limit as may be otherwise mutually agreed upon by the Planning Board and the applicant, the Board shall approve, approve with conditions or deny the application in writing, together with the findings on which that decision is based.

Section 7: PLANNING BOARD APPROVAL STANDARDS

An application for approval by the Planning Board under Section 6 must meet the following standards.

7.1 Design for Co-location. A new wireless communications facility and related equipment shall be designed and constructed to accommodate expansion for future co-location of at least three additional wireless communications facilities or providers.

7.2 Tower Design. Lattice tower structures without guy-wires are preferred. Where a monopole and/or guy-wires are specified, applicant must demonstrate the future utility of such a structure for expansion of service for the applicant and for co-locators.

7.3 Height. A new wireless communications facility shall be no more than one hundred ninety (190) feet in height.

7.4 Setback. The base of tower of a new or expanded wireless communications facility shall be set back one hundred fifty percent (150%) of its height from all property lines and public roads. The setback may be satisfied by including the areas outside the property boundaries if secured by an easement.

7.5 Landscaping. A new wireless communications facility and related equipment shall be screened with plants from view by abutting properties, to the maximum extent practicable. Existing plants and natural land forms on the site shall also be preserved to the maximum extent practicable. Landscaping shall be exclusively native and non-invasive plants.

7.6 Fencing. A new wireless communications facility shall be fenced to discourage trespass on the facility and to discourage climbing on any structure by trespassers.

7.7 Lighting. A new wireless communications facility shall be illuminated only as necessary to comply with FAA or other applicable state and federal requirements. Security lighting may be used as long as it is shielded to be down directional to retain light within the fenced boundaries of the site.

7.8 Color and Materials. A new wireless communications facility must be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable.

Unless otherwise required, muted colors, earth-tones, and subdued hues shall be used.

7.9 Structural Standards. A new wireless communications facility must comply with the current Electronic Industries Association/ Telecommunications Industries Association (EIA/TIA) 222 Revision Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures" and with Hancock County Standards for wind shear and ice load.

7.10 Visual Impact. The proposed wireless communications facility, to the greatest degree practicable, shall have no unreasonable adverse impact upon designated scenic resources and structures within the Town, as identified in the municipally adopted comprehensive plan or by a State or Federal agency, such as the National Register of Historic Places.

In determining the potential unreasonable adverse impact of the proposed facility upon scenic resources, the Planning Board may consider the following factors:

- 1) The extent to which the proposed wireless communications facility is visible above tree line from the viewpoint(s) of the impacted designated scenic resource and the particular scenic areas of value noted in the Town's Comprehensive Plan.
- 2) The type, number, height and proximity of existing structures and features, and the background features within the same line of sight as the proposed facility.
- 3) The amount of vegetative screening.
- 4) The distance of the proposed facility from the viewpoint and the facility's location within the designated scenic resource.
- 5) The presence of reasonable alternatives that allow the facility to function consistently with its purpose.

7.11 If an applicant proposes to locate a new wireless communications facility on municipal property, the applicant must show the following:

- 7.11.1 The proposed location complies with applicable municipal policies and ordinances.
- 7.11.2 The property lies outside of the Shoreland Zone.
- 7.11.3 The proposed facility will not interfere with the intended purpose of the property.
- 7.11.4 The applicant has adequate liability insurance and a lease agreement with the municipality that includes reasonable

compensation for the use of the property and other provisions to safeguard the public rights and interests in the property.

Section 8: CEO APPROVAL REQUIREMENTS (for expansion of an existing facility)

8.1 An application for expansion of a non-conforming facility shall address the general rules for all applications (Section 6.2) and also include:

8.1.1 A drawing showing the fields of coverage of present wireless communications facilities and the area proposed to be covered by the expansion, and

8.1.2 A written description of how the expanded facility will fit into the applicant's wireless communications network. This submission does not require disclosure of confidential business information.

8.2 An application for expansion of a conforming facility which was not detailed in the original application approved by the Planning Board shall include:

8.2.1 A drawing showing the fields of coverage of present wireless communications facilities and the area proposed to be covered by the expansion,

8.2.2 A written description of how the expanded facility will fit into the applicant's wireless communications network. This submission does not require disclosure of confidential business information, and

8.2.3 A revised drawing from the application approved by the Planning Board showing the proposed expansion.

Within thirty (30) days of receipt of the completed application, or within another time limit as may be mutually agreed upon by the CEO and the applicant, the CEO shall approve, approve with conditions or deny the application in writing, together with the findings on which that decision is based.

Section 9: SUBMISSION WAIVER

The CEO and/or the Planning Board may waive any of the submission requirements based upon a written request of the applicant submitted at the time of application. A waiver of any submission requirement may be granted only if the CEO and/or the Planning Board find in writing that due to special circumstances of the application the information is not required to determine compliance with the standards of this ordinance.

Section 10: FEES

10.1 Application Fee. An application for CEO and/or for Planning Board approval shall include payment of an application fee of two hundred fifty dollars (\$250). The application shall not be considered complete until this fee is paid.

10.2 Planning Board Review Fee. In addition to the application fee required under Section 10.1 above, the Planning Board may require an applicant to deposit, in advance, with the Town Treasurer, a sum determined by the Planning Board to be sufficient to reimburse all outside costs to be incurred by the Planning Board in its review of the application. Such costs may include, but are not limited to, costs of professional surveying, engineering and legal assistance as needed by the Planning Board pursuant to their review of the application. The purpose of such outside services shall be to provide independent technical advice to the Planning Board when, in the opinion of the Planning Board, the public interest or issues raised by the application may require it. In the event the Planning Board's actual outside review costs exceed the initial cost estimate, the Planning Board will require the applicant to deposit additional funds with the Town Treasurer. All funds shall be deposited in an escrow account and any portion not used shall be returned to the applicant within thirty (30) days of the Planning Board's decision.

Section 11: AMENDMENT TO AN APPROVED APPLICATION

Any changes to an approved application must be approved by the CEO and/or the Planning Board, in accordance with Section 5. If there is a transfer of ownership before or during the building phase, the new owner shall meet with the CEO and/or the Planning Board.

Section 12: ABANDONED OR UNCOMPLETED FACILITIES

12.1 Abandoned Facilities. A wireless communications facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The CEO shall notify the owner of an abandoned facility in writing and order the removal of the facility within ninety (90) days of receipt of the written notice. The owner of the facility shall have thirty (30) days from the receipt of the notice to demonstrate to the CEO that the facility has not been abandoned. If the owner fails to show that the facility is in active operation, the owner shall have sixty (60) days to remove the facility. If the facility is not removed within this time period, the municipality may remove the facility at the facility owner's expense, the cost of which shall first come from any surety or bond in favor of the municipality under Section 6.3.11.

12.2 Uncompleted Facilities. A wireless communications facility that does not contain all lot improvements and landscaping in accordance required under this ordinance by the time it goes into operation shall be considered

uncompleted. The CEO shall notify the owner of the facility in writing and order the completion of said facility within ninety (90) days of receipt of the written notice. If the facility is not completed within this time period, the municipality may undertake all uncompleted lot improvements and landscaping at the facility owner's expense, the cost of which shall first come from any surety bond in favor of the municipality under Section 6.3.11.

12.3 Release of Surety/Bond. Upon removal of the wireless communications facility or the completion of said facility, as the case may be, the facility owner may apply to the Planning Board for release of part or all of the surety bond. The request shall not be unreasonably withheld so long as the facility has been removed or completed to the satisfaction of the Planning Board.

Section 13: APPEALS

Any appeal by any aggrieved party with standing from any decision of the CEO or the Planning Board to approve, approve with conditions or deny any application made under this ordinance, including any enforcement action or inaction alleged under Section 14 of this ordinance, shall be to the Superior Court in accordance with Rule 80(B) of the Maine Rules of Civil Procedure, said appeal to be filed within thirty (30) days of the written decision, action of failure or refusal to take action complained of.

Section 14: ADMINISTRATION AND ENFORCEMENT

The CEO, as appointed by the Board of Selectmen, shall enforce this ordinance. If the CEO finds that any provision of this ordinance has been violated, the CEO shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. The CEO may take any other legal action to ensure compliance with this ordinance.

The Board of Selectmen is authorized to enter into administrative consent agreements for the purpose of eliminating violations of this ordinance and recovering fines without court action. Such agreements shall not allow a violation of this ordinance to continue unless there is clear and convincing evidence that the violation occurred as a direct result of erroneous advice given by an authorized municipal official upon which the applicant reasonably relied to its detriment and there is no evidence that the owner acted in bad faith and/or that the removal of the violation will result in a threat to public health and safety or substantial environmental damage.

Section 15: PENALTIES

Any person who owns or controls any building, tower or property that violates this ordinance shall be penalized in accordance with 30-A MRSA §4452. Each day such violation continues after notification by the CEO shall constitute a separate offense.

Section 16: CONFLICT AND SEVERABILITY

13.1 Conflicts with other Ordinances. Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or of any other ordinance, regulation, or statute, the more restrictive provision shall apply.

13.2 Severability. The invalidity of any part of this ordinance shall not invalidate any other part of this ordinance.

Section 17: EFFECTIVE DATE

This ordinance becomes effective immediately upon passage by the Town.

Section 18: DEFINITIONS

Antenna: any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio or electromagnetic frequency signals.

Antenna Height: the vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure, even if said highest point is an antenna. Measurement of tower height shall include antenna, base pad, and other appurtenances and shall be measured from the finished grade of the facility site. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

Co-location: the use of a wireless communications facility by more than one wireless communications provider.

Conforming: a communications facility constructed under the authority of the Wireless Communication Facilities Ordinance or one complying with the requirements thereof.

Designated scenic resource: that specific location, view or corridor identified as a scenic resource in the municipally adopted comprehensive plan or by a state or federal agency that consists of:

- 1) a three dimensional area extending out from a particular viewpoint on a public way or within a public recreational area focusing on a

single object, such as a mountain, resulting in a narrow corridor, or a group of objects, such as a downtown skyline or mountain range, resulting in a panoramic view corridor.

2) lateral terrain features such as valley sides or woodland as observed to either side of the observer, constraining the view into a narrow or particular field, as seen from a viewpoint on a public way or within a public recreational area.

Expansion: the addition of antennas, towers or other devices and structures to an existing facility, by the owner or a co-locator, which was not detailed in the application approved by the Planning Board.

FAA: the Federal Aviation Administration or its lawful successor.

FCC: the Federal Communications Commission, or its lawful successor.

Guy-wire: a tensioned cable between the tower and the ground or other surface for lateral support.

Height: the vertical measurement from a point on the ground at the mean finish grade adjoining the foundation, as calculated by averaging the highest and lowest finished grade around the building or structure, to the highest point of the building or structure. The highest point shall exclude farm building components, flagpoles, chimneys, ventilators, skylights, domes, water towers, bell towers, church spires, processing towers, tanks, bulkheads or other building accessory features usually erected at a height greater than the main roofs of buildings.

Historic, archaeological and recreational resources: resources which are:

1. Listed individually in the National Register of Historic Places or eligible for listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs approved by the Secretary of the Interior;
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by Secretary of the Interior through the Maine Historic Preservation Commission;
5. Areas identified by a government agency such as the Maine Historic Preservation Commission as having significant value or archaeological

resource and any areas identified in the municipality's comprehensive plan, which have been listed or are eligible for listing; and

6. State and local park and conservation land.

Lattice tower: a type of mount with multiple legs and structural cross-bracing between the legs that is self-supporting and free-standing.

Line of sight: the direct view of the object from the designated scenic resource.

Monopole: a mount that is self-supporting with a single shaft of wood, steel, concrete or other material that is designed for the placement of antennas and arrays along the shaft.

Mount: the structure or surface upon which antennas and arrays are mounted.

Non-conforming: a communications facility that is not constructed under the authority of the Wireless Communications Facilities Ordinance and does not meet the requirements thereof.

Parabolic antenna (also known as a satellite dish antenna): a bowl-shaped antenna designed for the reception and/or transmission of radio frequency communication signals in a specific directional pattern.

Principal use: the use other than one which is wholly incidental or accessory to another use on the same premises.

Public recreational facility: a regionally or locally significant facility, as defined and identified either by State statute or in the municipality's adopted comprehensive plan, designed to serve the recreational needs of people.

Setback: the distance measured from the base of the tower.

Shall and May: "shall" is mandatory; "may" is permissive.

Substantially completed: 90% of total construction is completed.

Targeted market coverage area: the area which is targeted to be served by the proposed communications facility.

Unreasonable adverse impact: the proposed project would produce an end result which is excessively out-of-character with the designated scenic resources affected, including existing buildings, structures and features within the designated scenic resource, and/or would significantly diminish the scenic value of the designated scenic resource.

Viewpoint: that location which is identified either in the Town's comprehensive plan or by a federal or state agency and which serves as the basis for the location and determination of a particular designated scenic resource.

Wireless communications facility or facility: any structure, equipment, antenna, tower or other device which provides radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), common carrier wireless exchange phone services, specialized mobile radio communications (SMR), common carrier wireless exchange access services, and personal communications service (PCS) or pager services, or any other kind of wireless communication transmissions. When a tower or similar support structure is land-based, "facility" includes the area and all components including the perimeter fencing.