

2017

Town Ordinances of Winter Harbor, Maine

Winter Harbor (Me.). Municipal Officers

Follow this and additional works at: <https://digitalcommons.library.umaine.edu/towndocs>



Part of the [Public Affairs, Public Policy and Public Administration Commons](#)

Repository Citation

Winter Harbor (Me.). Municipal Officers, "Town Ordinances of Winter Harbor, Maine" (2017). *Maine Town Documents*. 6925.
<https://digitalcommons.library.umaine.edu/towndocs/6925>

This Plan is brought to you for free and open access by DigitalCommons@UMaine. It has been accepted for inclusion in Maine Town Documents by an authorized administrator of DigitalCommons@UMaine. For more information, please contact um.library.technical.services@maine.edu.

Chapter 2

Article I - Town Meetings

Section 2-101 Call of Town Meeting

Each town meeting shall be called by a warrant. The warrant shall be signed by a majority of the Selectmen, except as follows:

- A. First Town Meeting. The first Town Meeting shall be called in the manner provided in the act of incorporation.
- B. Majority of Selectmen. If, for any reason, a majority of the Selectmen do not remain in office, a majority of those remaining may call a town meeting.
- C. Petition of Three (3) Voters; If No Selectmen. When a town, once organized, is without Selectmen, a meeting may be called by a Notary Public in the county on the written petition of any three (3) voters.
- D. Petition By Voters, If Selectmen Refuse. If the Selectmen unreasonably refuse to call a town meeting, it may be called by a Notary Public in the county on the written petition of the number of voters equal to at least ten percent (10%) of the number of votes cast in the Town at the last gubernatorial election, but in no case less than ten (10).

Section 2-102 Warrant

The warrant for calling any Town Meeting shall meet the following requirements:

- A. Time and Place. It shall specify the time and place of the meeting.
- B. Business To Be Acted Upon. It shall state in distinct articles the business to be acted upon at the meeting, and no other business may be acted upon.
- C. Notification. It shall be directed to a town constable, or to any resident by name, ordering him to notify all voters to assemble at the time and place appointed.
- D. Attested Copy Posted. An attested copy shall be posted by the person to whom it is directed in some conspicuous, public place in the Town at least seven (7) days before the meeting, unless the Town has adopted a different method of notification.

Section 2-104 General Town Meeting Provisions (Continued)

3. When a vote declared by the moderator is immediately questioned by at least seven (7) voters, he shall make it certain by polling the voters or by a method directed by the Legislative Body.

4. The moderator shall serve until the meeting is adjourned and shall be subject to the same penalties for neglect of official duty as are other town officials.

D. Votes Recorded By Clerk. The Clerk shall record accurately the votes of the meeting. In the absence of the Clerk, the Moderator shall appoint and swear in a temporary Clerk.

E. Written Ballots. Ballots shall be prepared by the Town Clerk, be of uniform size and color, and shall be blank except that two (2) squares with "yes" by one (1) and "no" by the other may be printed on them.

The moderator shall assure that each voter receives only one (1) ballot for each vote taken.

F. Location of Meetings. Town meetings may be held outside the corporate limits of the municipality if the proposed location is within an adjoining or nearby municipality, is not more than 25 miles from the corporate limits of the municipality holding the meetings, is reasonably accessible to all voters of the town and if the municipal officers determine that there is no adequate facility for the meeting within the municipality.

Section 2-105 Annual Meeting

Each Town shall hold an annual meeting, at which time the following Town official shall be elected by ballot: Moderator, Selectmen and School Committee.

A Town may, at a meeting held at least sixty (60) days prior to the annual meeting, designate other Town Officials to be elected by ballot. The election of officials at the last annual Town Meeting shall be deemed to be such a designation until the Town otherwise acts. A Town Official may not be elected on a motion to cast one ballot.

Legal Note: Town Meetings are covered by Title 30 MRSA, Section 2051 et seq., as amended.

Chapter 2

Article II - Town Reports

Section 2-201 Annual Report

The officers of each municipality shall publish annually a complete report of the following provisions.

Section 2-202 Paper

It shall be printed on paper of at least fifty (50) pound basis weight and bound not less than six (6) inches wide by nine (9) inches long nor more than eight and a half (8½) inches wide by eleven (11) inches long.

Section 2-203 Record of Financial Transactions

It shall contain a record of all financial transactions of the municipality during the last municipal year, including an itemized list of receipts and disbursements indicating to whom and for what purpose each amount was paid.

A municipality may waive the printing in its annual report of the itemized list of receipts and disbursements which is effective until revoked.

Section 2-204 Statement of Assets and Liabilities; Delinquent Taxpayers

It shall contain a detailed statement of the assets and liabilities of the municipality including a list of all delinquent taxpayers and the amount due from each. It shall also contain any engineering and survey reports relating to the boundaries of the municipality and all proceedings and doings of the municipal officers relating thereto, together with any other information deemed by them to be of historical significance.

Section 2-205 Post-Audit Report

It shall contain the statement that the complete post-audit report for the latest municipal year is on file at the municipal office and the following excerpts from the report:

- A. Name and address of the auditor;
- B. Auditor's comments and suggestions for improving the financial administration;
- C. Comparative balance sheet;
- D. Statement of departmental operation.

Chapter 3

Article II - Board of Selectmen

Section 3-201 Establishment

The Board of Selectmen is established and governed by Title 30, MRSA, Section 2060.

Section 3-202 Organization

Winter Harbor has three (3) selectmen who also serve as the Overseers of the Poor. There is a separate election for assessors. The selectmen are elected according to Title 30, MRSA, Section 2060, and they elect a chairman from amongst themselves. To be eligible to be a selectman, an individual shall be at least eighteen (18) years of age, a voter in Winter Harbor, a Maine resident, and a United States citizen. The selectmen shall earn ten dollars (\$10.00) a day for each day actually employed in the service of the Town unless other compensation is established by the Town at its annual meeting.

Section 3-203 Powers and Duties

The selectmen function as the municipality's executive branch and as the agent of the municipality's legislative branch, the town meeting. The duties of the selectmen are both of an administrative and judicial nature. The following are some of the Board's statutory duties and powers: the selectmen sign the town warrant, may order a referendum question with the Board's recommendation included on the ballot, and supervise election result recounts. (See Title 30, MRSA, Sections 2051, 2051(4), 2064).

The selectmen shall also certify proposed ordinances to the clerk before they are voted on by the Town; they shall appoint a registrar of voters, and they shall appoint ballot clerks. (See Title 30 MRSA, Section 2153(2), Title 21, MRSA, Section 41, and Title 30 MRSA, Section 2061(7)).

The selectmen also have the general power over municipal finances (Title 30 MRSA, Section 5001), they are the assessors (Title 36 MRSA, Section 703), they have general powers over roads and road commissioners (Title 23 MRSA, Section 2701, et seq.), they are generally the licensing authority for the Town (Title 30 MRSA, Section 2151(6)), they may repair or remove dangerous buildings (Title 17 MRSA, Section 2851), they may grant licenses to carry a concealed weapon (Title 25 MRSA, Section 2031), and they may appoint and fix the compensation of law enforcement officers (Title 30 MRSA, Section 2361).

Chapter 3

Article III - Budget Committee

Section 3-301 Establishment

The Budget Committee is established and governed by Title 30 MRSA, Section 1917.

Section 3-302 Purpose

The purpose of the Budget Committee is to oversee the raising and appropriation of monies for various uses of Town funds. The Budget Committee shall make recommendations at Town Meeting concerning whether requested funds should be appropriated or not.

Section 3-303 Organization

The Committee is elected at the annual town meeting. There may be twelve members and they shall serve one year terms.

Section 3-304 Powers and Duties

The Committee is empowered to aid the municipal officers in budget preparation by means of establishing priorities and spending levels. When a question concerning a proposed town expenditure is presented as a referendum question or a pre-printed ballot then the Committee's recommendation shall be attached to it.

Chapter 3

Article V - Planning Board

Section 3-501 Establishment

Winter Harbor's Planning Board was created in 1966 according to Chapter 405 of the Maine Public Laws of 1957. According to Chapter 405 of the Public Laws of 1957, Section 61, a municipality could establish a planning board for the purpose of municipal development.

Section 3-502 Organization

The Board shall consist of 5 members and 2 associate members who are elected at the annual town meeting. The members shall serve staggered five-year terms. The Board shall elect a chairman and a secretary from amongst themselves. A selectman may not be a member or an associate member of the Board. An associate member may attend all meetings of the Board and participate in its proceedings, but may vote only when he has been designated by the chairman to act for a member. When a member is unable to act because of interest, physical incapacity or absence from the state, the planning board chairman shall designate an associate member to act in his stead. When there is a permanent vacancy, the selectmen shall appoint a person to serve for the unexpired term.

Section 3-503 Powers and Duties

The Board has the power to prepare, adopt, and amend a comprehensive plan containing its recommendations for the development of the municipality. A municipality which has a planning board may raise or appropriate money and may contract with the state and federal governments for purposes of comprehensive planning. The Board may hire personnel and obtain goods and services necessary to its proper function within the limits of appropriations made for the purpose of municipal development. The planning board may also prepare a zoning ordinance and such ordinances as are necessary to regulate the subdivision of land. Further powers are outlined in Title 30 MRSA, Section 4961.

Chapter 3

Article IX - Winter Harbor School District Trustees

Section 3-901 Establishment

The Trustees for the District are established under the criteria set forth in Title 20 MRSA, Section 352.

Section 3-902 Purpose

The Trustees are organized in order to supervise the operation of the specific grade levels of the school system and they represent the municipality in the settling of educational policies.

Section 3-903 Organization

The School District Trustees are elected at the Town Meeting and the three (3) Trustees serve staggered three (3) year terms. (30 MRSA, Section 352). Trustee vacancies shall be temporarily filled by appointment by the municipal officers of the town where the former Trustee resided until a successor Trustee is elected for the unexpired portion, if any, of the term, at the next annual Town Meeting in said town.

Section 3-904 Powers and Duties

The powers and duties of the Trustees are set forth in Title 20, MRSA, Section 353. Generally, the Trustees are empowered to oversee the creation of a community school district while the actual running of the schools, with regard to teachers, salaries, and courses of studies, is left to the School Committee.

Chapter 4

Article II - Housing Act of 1937

Section 4-201 Authority

The authority contained in Section 23 of the United States Housing Act of 1937, as amended, is granted through the Secretary of Housing and Urban Development, to the local housing agency.

Section 4-202 Purpose

To provide financial assistance to local public housing agencies in providing low-rent housing by leasing dwelling units in privately owned structures.

Section 4-203 Application

The application of Section 23 of the United States Housing Act of 1937, as amended, to the Town of Winter Harbor is approved.

Historical Note: The Town of Winter Harbor enacted this Housing Act on March 4, 1974.

Chapter 4

Article I - Building Code

Section 4-101 Authority

This code is created according to the powers given a municipality by Title 30 MRSA, Section 2151 (4).

Section 4-102 Purpose

An ordinance to provide for safety, health and public welfare through the regulation of construction, relocation and replacement of dwellings; providing for permits and prescribing penalties for violations.

Section 4-103 Scope

The provisions of this Building Code shall apply to all new construction; all structural alterations of existing buildings; and all non-structural alterations, additions, or remodeling of an estimated cost of more than \$500.00.

Section 4-104 Administration

This Chapter shall be administered by the Building Inspector.

- A. Inspection. The Building Inspector may inspect all buildings being constructed, added to, replaced or relocated for the purpose of enforcing the provisions of this Ordinance and all other local and State laws governing the construction or replacement of buildings.
- B. Right of Entry. The Building Inspector, in the performance of his duties, may enter any building for the purpose of making the inspection required by this Chapter.

Section 4-105 Permit

Before any work covered in this Code shall be commenced, the owner, or his designee, shall obtain from the Building Inspector a permit covering such proposed work.

- A. Application. The application for the permit shall be in writing and shall be made in such form as the Building Inspector shall prescribe, and shall contain a description of the proposed work. A copy of the application shall be filed by the Building Inspector, with the Board of Assessors (Selectmen) and the Planning Board.

Section 4-105 (Continued)

- B. Permit Approval. The Building Inspector after proper examination of the application, shall either issue the requested permit or transmit notice of refusal within a reasonable time. Notice of refusal shall be in writing and shall state the reasons therefore.

No permit shall be issued prior to the applicant obtaining all other local, state and federal permits required including a plumbing permit where plumbing is required.

- C. Life of Permit. All Building Permits shall be void unless construction is commenced within one (1) year from the date of issuance.

- D. Amendments to Ordinance. All amendments to this Ordinance shall apply to outstanding permits issued before the effective date of the amendment on which work has not commenced.

Section 4-106 Fees

The fee shall be two dollars (\$2) for the first one thousand dollars (\$1,000) and one dollar (\$1) for each additional one thousand dollars (\$1,000) of proposed work.

Section 4-107 Minimum Construction Standards

All building materials used and practices followed in the construction of buildings shall conform to the generally accepted standards of good practice as prescribed by the 1976 edition of the National Building Code, as amended and updated.

All mobile homes shall be constructed and maintained according to the minimum standards set forth in the National Manufactured Home Construction and Safety Standards Act of 1974, (P.L. 93-383, Title VI, as amended).

Section 4-108 Electrical Installation

All electrical entrance work shall be done by a licensed electrician, and any other electrical work shall be in accordance with the National Electrical Code.

Section 4-109 Plumbing Installation

All interior and exterior plumbing work shall be done in compliance with the Maine State Plumbing Code, as amended.

Section 4-110 Disposal of Waste During Construction

Waste material and rubbish shall be removed from the premises as rapidly as practicable. No material shall be disposed of by burning without permission from the Fire Department.

Section 4-111 Violations

Any violations of this Ordinance are subject to a fine of not more than one hundred dollars (\$100). Each day such a violation exists shall constitute a separate offense.

The legal responsibility for obtaining a permit for such work rests with the property owner; however, any contractor involved in any activity regulated by the provisions of this Code may be held liable for violating this Code if the necessary permits for said activity have not been obtained.

Historical Note: Enacted by the Town on December 14, 1981.

TOWN OF WINTER HARBOR
P.O. Box 98
Winter Harbor, Maine 04693

Chapter 9

Article 1 – Stumpage Ordinance

Section 9-101

Purpose

To support responsible and sustainable forest management on town-owned property and establish guidelines for use of the shared resource for all residents of Winter Harbor.

To raise funds to support professional oversight of forests on town-owned property, including development of a forest management and harvesting plan.

Section 9-102

Authority

This ordinance is prepared and adopted pursuant to the authority granted under the Home Rule provisions of the Constitution of the State of Maine, Article VIII-A and the Home Rule provisions of Title 30, MRSA, Section 1917, as amended, and in accordance with the goals and policies as stipulated by the Comprehensive Planning process of the Town of Winter Harbor.

Section 9-103

Permit

A permit is required by the town and issued by the Selectmen for the purpose described herein, and must be presented by the harvester upon request.

Issued permits shall be valid for seven (7) days.

Section 9-104

Fee

A stumpage ordinance fee of \$20.00 per cord shall be paid prior to issuance of any permit.

Section 9-105

Restrictions

Cutting of timber on town-owned land is restricted to the residents of the town only, for personal (non-commercial) use only.

Cutting of timber shall be limited to blazed or otherwise identified stands of trees, and dead or diseased trees shall be harvested first within the given stand.

Slash and other cuttings shall be chipped, or stacked and burned with appropriate burn permit.

Each household within the town shall be limited to five (5) cords of wood harvested per year.

Section 9-106

Enforcement

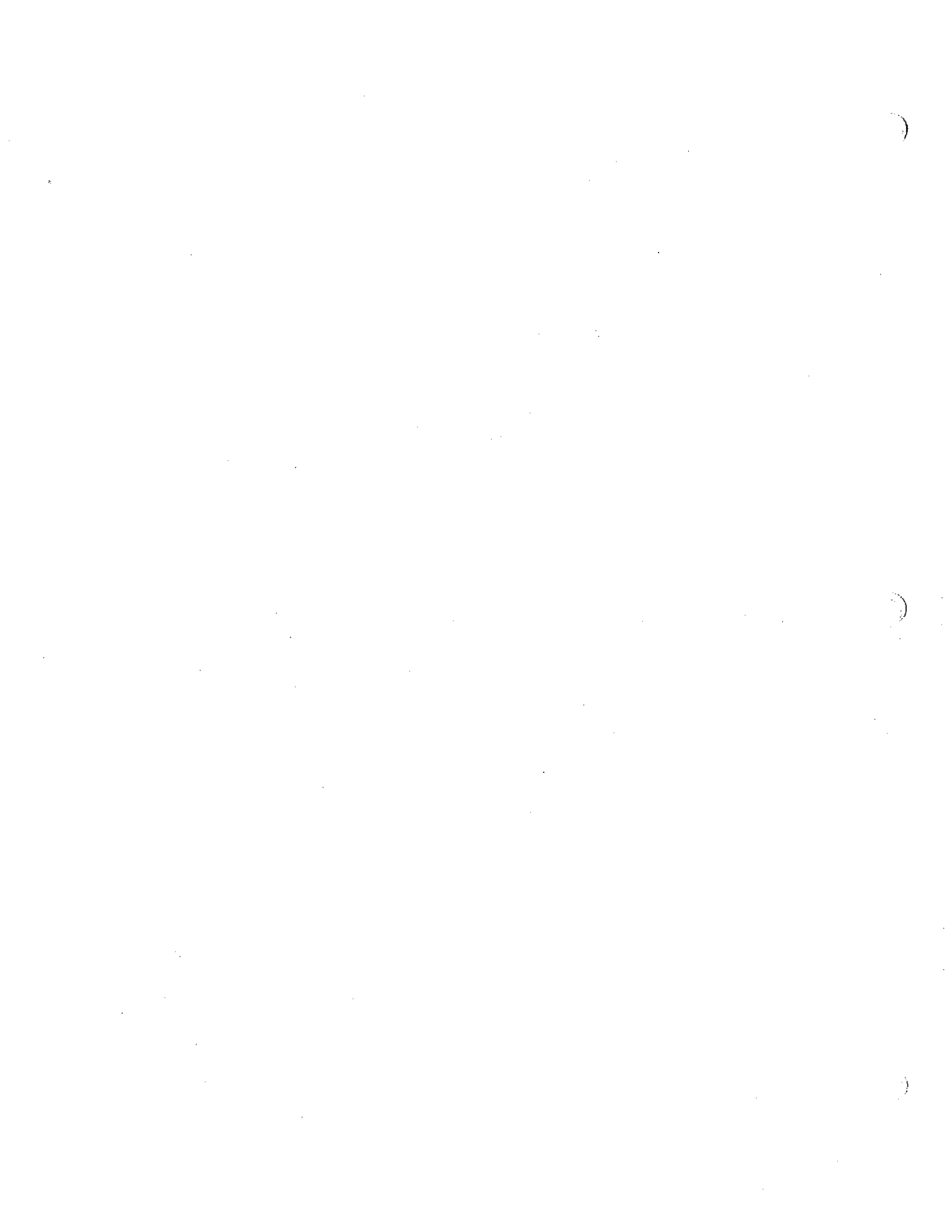
The Winter Harbor Police Department shall be responsible for handling all violations of this ordinance.

Violations of this ordinance will be assessed a fine of \$100 per day, to a maximum of \$2,500. Violators of this ordinance will not be allowed to obtain permits under this ordinance for a period of three (3) months from the date the violation is reported.

WINTER HARBOR
Zoning Ordinance

6/19/13
~~2/27/13~~

Adopted October 28, 2004



Chapter 12

Article III – Zoning Ordinance

Section 12-301 Authority

This ordinance is prepared and adopted pursuant to authority granted under the provisions of Article VIII -A of the Maine Constitution, Title 30 - A MSRA Section 3001 (Home Rule), Title 30 - A MSRA Section 4323 (Growth Management), Title 38, MSRA, Sections 435 through 499 as amended (Mandatory Shoreland Zoning), Title 22 MSRA 2642 (Protection of Drinking Water Supplies).

Section 12-302 Purpose

This Zoning Ordinance and its regulations are designed for all the purposes of zoning embraced in the Revised Statutes of Maine, as amended, as an integral part of a Comprehensive Plan.

The purposes of this ordinance are:

1. to encourage the most appropriate use of land throughout the municipality;
2. to promote traffic safety;
3. to provide safety from fire, flood and other elements;
4. to promote a wholesome home environment;
5. to provide adequate light and air;
6. to prevent overcrowding of real estate;
7. to prevent housing development in unsanitary areas;
8. to provide an adequate street system;
9. to further the maintenance of safe and healthful conditions;
10. to protect the public water supply in Winter Harbor from land uses which pose a threat to the quality and/or quantity of the ground water being extracted from the wells which serve the public water system;
11. to control building sites, placement of structures and land uses;
12. while ensuring the provision of adequate community services.

Section 12-303 Applicability

This Ordinance applies to the all land and water areas within the town limits of Winter Harbor, Maine.

Section 12-304 Basic Requirements

All building or structures hereafter erected, reconstructed, altered, enlarged or moved, and uses of premises in the municipality of Winter Harbor shall be in conformity with the provisions of this Ordinance. No building, structure, land or water used for any purpose or in any manner except as permitted within the district in which such building, structure, land or water area is located. No new lot shall be created unless the lot is in conformity with the standards set forth in this ordinance.

Section 12-305 Non-Conformance

A. Purpose

1. 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 shall be allowed to continue subject to the requirements set forth in the applicable sections for non-conforming conditions in the Wellhead Protection Zones 1 & 2, Shoreland Zones, and subject to the requirements set forth in this section.

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, the normal 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.** 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.

Further Limitations:

- a. Construction or enlargement of a foundation beneath the existing structure shall not be considered an expansion of the structure provided; that the structure and new foundation are 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 subsection 2. Relocation, below; that the completed foundation does not extend beyond the exterior dimensions of the structure; and that the foundation does not cause the structure to be elevated by more than three (3) additional feet.
2. **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, 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 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.

3. **Reconstruction or Replacement.** Any non-conforming structure which is removed, or damaged or destroyed 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 one year of the date of said damage, destruction, or removal and provided that such reconstruction or replacement is in compliance with the setback requirement to the greatest practical extent as determined by the Planning Board 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.

Any non-conforming structure which is damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place with a permit, from the code enforcement officer.

In determining whether the building reconstruction or replacement meets the setback to the greatest practical extent the Planning Board shall consider in addition to the criteria in paragraph 2 above, the physical condition and type of foundation present, if any.

4. **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 written application determines that the new use will have no greater adverse impact on the water body 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 Uses

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 permitted in Section 12-305C(1)(a) 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 that 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 12-305C (4) 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 size and frontage can be met. Variances relating to setback or other requirements not involving lot size or 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 and 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 12-306 Amendments

This Ordinance may be amended by majority vote of the Legislative Body of the Town of Winter Harbor at a regular or special Town Meeting. Any amendments approved after January 1, 1989 relevant to shoreland areas as defined in Title 38, MRSA, Section 435, shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. The Department of Environmental Protection shall be notified by the municipal clerk of amendments to this Ordinance within thirty (30) days after the effective date of such amendments. Copies of amendments, attested and signed by the Municipal Clerk, shall be submitted to the Department of Environmental Protection following adoption by the municipal legislative body and shall not be effective unless approved by the Department of Environmental Protection. If the Department of Environmental Protection fails to act on any amendment within forty-five (45) days of the

Department's 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 Department.

Section 12-307 Validity and Separability

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

Section 12-308 Effective Date

This Ordinance shall take effect immediately upon adoption or amendment by the Legislative Body of Winter Harbor, Maine.

Any amendments approved after January 1, 1989, relevant to shoreland areas as defined in Title 38, MRSA, Section 435, shall not be effective uses approved by the Commissioner of the Department of Environmental Protection.

A certified copy of the Ordinance, attested and signed by the Municipal 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 deemed approved.

Any application for a permit submitted to the municipality relevant to shoreland areas as defined within the forty-five (45) day period shall be governed by the terms of this Ordinance if the Ordinance is approved by the Department of Environmental Protection.

Section 12-309 Availability

A certified copy of this Ordinance shall be filed with the Municipal 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 12-310 Establishment of Districts

A. **Zoning Districts.** To implement the provisions of this Ordinance, the municipality of Winter Harbor is hereby divided into the following districts as described in this Section and as shown on the Official Zoning Map appended to this Ordinance and hereby made a part of this Ordinance:

1. (RP) Resource Protection District
2. (RR) Residential/Recreation District
3. (LR) Limited Residential District
4. (GD) General Development District
5. (RD) Rural District
6. (SP) Stream Protection District

a. **Scale of Map.** The Official Zoning Map shall be drawn at a scale of not less than: 1 inch = 2000 feet. District boundaries shall be clearly delineated and a legend indicating the symbols for each district shall be placed on the map.

b. **Certification of Official Zoning Map.** The Official Zoning Map shall be certified by the attested signature of the Municipal Clerk and shall be located in the municipal office.

c. **Changes to the Official Zoning Map.** If amendments, in accordance with Section 12-306 are made in the district boundaries or other matter portrayed on the Official Zoning Map, such changes shall be made on the official Zoning Map within thirty (30) days after the amendment has been approved by the Commissioner of the Department of Environmental Protection.

B. **Zoning District Definitions**

1. **(RP) Resource Protection.** The Resource Protection District includes areas which development would adversely affect water quality, productive habitat, biotic habitat, or scenic and natural values.

This district shall include the following areas where they exist within the shoreland zone, except where areas, because of existing development, are suitable for inclusion in another districts as described in this Ordinance.

- a. Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) as of January 1, 1973.
- b. Flood plains along rivers and flood plains along artificially formed great ponds along rivers, defined by the 100 year flood plain as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils. This district shall also include 100 year flood plains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps.
- c. Areas of two or more contiguous acres with sustained slopes of 20% or greater.

- d. 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 surface-connected to a water body during normal spring high water.
 - e. Land areas adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs.
2. **Residential/Recreational District (RR).** The Residential/Recreational District includes areas other than those included in the Resource Protection District and which are used less intensively than those included in the Limited Residential, Rural, and the General Development Districts.
3. **Limited Residential District (LR).** The Limited Residential District includes areas other than those included in the Resource Protection District and the Residential/Recreational District and which are used less intensively than those included in the General Development District.
4. **General Development District (GD).** The General Development District includes the following types of areas:
- Areas of two (2) acres or more devoted to intensive residential/recreational, commercial or industrial activities or combinations of such activities, including but not limited to:
- a. Transportation right-of-way
 - b. Communication right-of-way
 - c. Areas used for extraction or processing of mineral resources
 - d. Areas devoted to manufacturing, fabricating, wholesaling, warehousing or other commercial activities
 - e. Areas devoted to retail trade and service activities
 - f. Areas devoted to intensive recreational development and activities
 - g. Areas devoted to residential dwelling units at a density of three (3) or more per two (2) acres
 - h. Areas devoted to mixed or combined patterns of a-g.
5. **Rural District (RD).** The Rural District shall include those areas discerned as suitable for low intensity residential, agriculture, timber management and light industrial use.
6. **Stream Protection District (SP).** The Stream Protection District includes all land areas within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream, as defined in this Ordinance and as shown on the official shoreland zoning map, exclusive of those areas within two-hundred and fifty (250) feet, horizontal distance, of the normal high-water line of a great pond, river or saltwater

body, or within two hundred and fifty (250) 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.

C. The Wellhead Protection Area

- a. Zone 1: Immediate Recharge Area. This zone includes the area immediately around the wellhead (a 300' radius) as shown on the Wellhead Protection Area Map.
- b. Zone 2: Primary Recharge Area. This zone includes the area as shown on the Wellhead Protection Area Map. (See map Reference C).

D. Uncertainty of District Boundaries. Where uncertainty exists with respect to the boundaries of the various districts as described herein and shown on the Zoning Map, the following rules shall apply:

1. Boundaries indicated as approximately following the centerline of streets, highways, alleys or right-of-way shall be construed to follow such lines;
2. Boundaries indicated as approximately following such lot lines as shall be construed as following such lot lines;
3. Boundaries indicated as approximately following municipal limits shall be construed as following such municipal limits;
4. Boundaries indicated as following shorelines shall be construed to follow such shorelines, and in the event of natural change in the shoreline, shall be construed as moving with the actual shoreline;
5. Boundaries indicated as approximately following the centerline of streams, canals, lakes or other bodies of water shall be construed to follow such lines;
6. Boundaries indicated as being parallel to or extensions of features indicated in sub-sections 1-5 above shall be so construed;
7. Where physical or cultural features existing on the ground are at variance with those shown on the official Zoning Map or with the written description contained herein or in other circumstances not covered by sub-sections 1-6 above, the Board of Appeals shall interpret the District Boundary in question.

E. Division of Lots by District Boundaries

1. Where a Zoning District boundary line divides a lot or parcel of land of the same ownership of record at the time such line is established by adoption or amendment of this Ordinance, the regulations applicable to the less restricted portion of the lot may be extended not more than fifty (50) feet into the more restricted portion of the lot.
2. Extension of use shall be considered a Conditional Use, subject to approval of the Planning Board in accordance with the provisions of this Ordinance.

F. District Boundary Descriptions

1. **Resource Protection District**
 - a. Resource Protection District #1. All Land and water area encompassed by Lots five (5) and nineteen (19) and Map 8.
 - b. Resource Protection District #2. All of Turtle Island and Schoodic Island.
2. **Residential/Recreational District.** All of the lots represented on Tax maps #17, #12, #14, and #11.
3. **Limited Residential District.** (Including that portion of Lot 6 shown on Map 20).
 - a. Limited Residential District #1. Beginning at the high water line at the Winter Harbor Town Line in Summer Harbor and extending inland following the Town Line a distance of two hundred and fifty (250) feet; thence running parallel to and two hundred and fifty (250) from the high water line southerly to where it intersects with the northern boundary line of Lot 11 Map 17; thence northwesterly along this northern boundary line to the high water lines to the beginning.
 - b. Limited Residential District #2. All the lands set forth by the boundary lines of lots 38, 38A, 38D, and 39 on Tax Map 15.
 - c. Limited Residential District #3. Beginning with the centerline on Beach Street opposite the southwestern boundary of lot 21 Map 18; thence north along the southwestern boundary of lot 21 Map 18 to a distance two hundred and fifty (250) feet from the high water line; thence northeasterly to the common border between lots 16 and 16 A, Map 18 maintaining a distance of two hundred and fifty (250) feet from the high water mark; thence southerly along the common border between lots 16A and 16 until the centerline of Beach Street; thence westerly along the centerline to the beginning.
 - d. Limited Residential District #4. Beginning at the centerline of Moore Road one thousand (1,000) feet from the centerline at the intersection of Moore and Main Street, thence proceeding westerly along the border of the General District, thence following the border of the General District to the high water line at the southwesterly corner of Lot 11 Map 16; thence southerly following the high water lines around Sargent Drive to Mill Stream to the northwestern boundary of Acadia National Park; thence easterly along the border of Acadia National Park to the centerline of Moore Road; thence northerly along the centerline to the beginning.
 - e. Limited Residential District #5. Beginning at the northern border of Frazer Creek between the two parcels of land owned by Acadia National Park; thence easterly to a point two hundred and fifty (250) feet inland from the high water line; thence southerly at a distance of two hundred and fifty (250) feet paralleling the high water line to the northern border of the property owned by Acadia National Park; thence northwesterly along this border of Acadia National Park to the high water line; thence north along the high water line to the beginning.
 - f. Limited Residential District #6 - Islands. Includes all land within two hundred and fifty (250) feet, horizontal distance, of the high water line of Ironbound Island and Jordan Island. Also includes all lands on Rolling Island, Mark Island, Ned Island, Norris Island, Sargents Island, Spectacle Island, Heron Island, Flat Island, Crow Island, Yellow Island and all other small islands so marked on the Zoning Map.

4. **General Development District**

- a. **General Development District #1.** Beginning at southeast corner Lot 28 Map 16; thence north along east boundary of said lot, across Main St., north along east boundary Lot 17 Map 8; thence south along west boundary Lot 17B and 17C Map 8 to Main St., thence west along centerline to southeast corner Lot 77 Map 19; thence north along east boundary and west along north boundary Lot 77 Map 19; thence north along east boundary and west along north boundary Lot 73 Map 19 to Hillcrest Drive; thence north along east boundary Lot 71A Map 19 to east boundary Lot 70 Map 19; thence north along east boundary Lots 70 and 67 Map 19 to Lot 61 Map 19; thence north along east boundaries of Lot 61 Map 19, Lot 8 Map 21, and Lots 36,40,38,37,35,34,33,32,31,30,29 Map 8 to northeast corner Lot 29 Map 8; thence west along boundary Lot 29 Map 8, across Newman St. and along north boundaries Lot 9 Map 8, Lots 3-2 and 2-1 Map 7 to northwest corner Lot 2-1 Map 7; thence south along west boundaries of Lots 2-1 and 2 Map 7, and Lot 48 Map 19 to northeast corner Lot 72C Map 18; thence west along north boundary Lot 54 Map 18; thence west along north boundary Lot 54 Map 18, across Bellevue Ave., along north boundaries Lots 40 and 29 Map 18 to Main St.; thence south along centerline to northeast corner Lot 17 Map 18; thence west along north boundary and south along west boundary Lot 17 Map 18 to north boundary Lot 16 Map 18; thence west along north boundary and south along west boundary Lot 16 Map 18, across Beach St., continuing south along west boundary Lots 37 and 37A Map 15; thence east along south boundary Lot 37A Map 15 to Inner Harbor; thence east along high water mark to the southwest corner Lot 16 Map 16; thence east along south boundary Lot 16 Map 16 to Sargent St.; thence north along the centerline to southwest corner Lot 1 Map 16; thence east along south boundaries Lots 1 and 29 Map 16 to west boundary Lot 27 Map 16; thence south along west boundary and east along south boundary Lot 27 Map 16 to west boundary Lot 28 Map 16; thence south along west boundary and east along south boundary Lot 28 Map 16 to Moore Rd. (Adopted at Town Meeting 12 June 2002). (See General Development Zoning Map Reference B.)
5. **Rural District.** Includes all other land areas of the Town of Winter Harbor covered by this Ordinance and not included in other districts as described herein.
6. **Stream Protection District.** The Stream Protection District includes all land areas within 75 feet of Mill Stream beginning at the northerly town boundary, thence flowing southerly to the point at which the stream is within 250 feet upland of the tidal limit.

Section 12-311 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 control.

Section 12-312 Schedule of Uses

No structure shall be erected, altered, enlarged, rebuilt, moved or used and no premises shall be used unless such structure or use complies with the provisions of this Ordinance and the necessary permits as provided for in the following Schedule of Uses are obtained.

Legend

- YES Activity Permitted, no permit necessary provided all other laws and regulation either federal, state or local are adhered to.
- NO Activity prohibited.
- CEO Activity requires application for and permit issued by Code Enforcement Officer according to this Ordinance
- RP Resource Protection District
- RR Residential-Recreational District
- LR Limited Residential District
- GD General Development District
- RD Rural District
- PB Activity requires Planning Board approval.
- SP Stream Protection District
- LPI Local Plumbing Inspector permit required



1. Non-Intensive recreational uses not requiring structures, such as hunting, fishing, hiking, etc	Yes	YES	YES	YES	YES	YES
2. Motorized Vehicle traffic on roads and trails	Yes	YES	Yes	YES	YES	YES
3. Forest Management activities except for timber harvesting	Yes	YES	YES	YES	YES	YES
4. Fire Prevention Activities	Yes	YES	YES	YES	YES	YES
5. Wildlife Management Practices	Yes	YES	YES	YES	YES	YES
6. Soil and Water conservation practices not requiring structures, dredging or filling	Yes	YES	YES	YES	YES	YES
7. Surveying and Resources Analysis	Yes	YES	YES	YES	YES	YES

8. Emergency operations as defined	Yes	YES	YES	YES	YES	YES
9. Mineral Exploration*	Yes 3	YES 3	YES 3	YES 3	YES 3	NO
10. Harvesting of wild crops	Yes	YES	YES	YES	YES	YES
11. Agriculture and Gardening*	Yes	Yes	YES	YES	YES	YES
12. Timber Harvesting	CEO 2	CEO	CEO	CEO	CEO	CEO
13. Public or private recreation facilities including parks, playgrounds, golf courses, driving ranges and swimming pools but excluding campgrounds	PB	PB	PB	PB	PB	PB
14. Campgrounds	NO	NO	NO	PB	PB	NO
15. Principle Structures*						
a. Single family dwellings	NO	CEO	CEO	CEO	CEO	PB 4
b. Family farm	NO	PB	PB	CEO	CEO	PB
c. Professional office: clergyman, physician, architect, engineer, attorney or a similar professional person or occupation	NO	NO	PB	CEO	CEO	NO
d. Home occupation: customary home occupations carried on and requiring only customary home equipment such as fisherman, musician, dressmaker, etc.	NO	PB	PB	CEO	CEO	NO
e. Motels, hotels and transient lodgings	NO	NO	PB	CEO	CEO	NO
f. Automobile service stations	NO	NO	NO	PB	PB	NO
g. Multi-family dwellings or apartments	NO	NO	PB	CEO	CEO	NO
h. Road-side stands for agricultural products	NO	NO	PB	CEO	CEO	NO
i. Floral, nursery, shrubbery, greenhouse and similar enterprises	NO	NO	NO	CEO	CEO	NO
j. Water recreation/fishing related retail and service enterprises	NO	NO	PB	CEO	CEO	NO
16. Structures accessory to permitted uses	PB	CEO	CEO	CEO	CEO	PB 4
17. Road and driveway construction*	NO 6	PB	PB	YES	YES	PB
18. Small non-residential, non-profit facilities for educational, scientific or nature interpretation purposes	PB	PB	PB	CEO	CEO	PB 4
19. Municipal structures or uses	NO	PB	PB	PB	PB	PB
20. Mobile homes-manufactured housing	NO	NO	CEO	CEO	CEO	NO
21. Cluster Development*	NO	NO	NO	PB	PB	NO



22. Commercial and industrial facilities having less than two thousand five hundred (2,500) square feet of gross floor area employing less than six (6) full-time employees or the equivalent thereof.	NO	NO	PB	CEO	CEO	NO
23. Commercial and industrial facilities having more than two thousand five hundred (2500) square feet of gross floor area and/or employing more than six 6 full-time employees or the equivalent thereof.	NO	NO	NO	PB	PB	NO
24. Commercial and industrial facilities which by their nature of operation require shore front location, such as boatyards, marinas, fishing facilities, and other marine resource related activities.	See Shoreland Ordinance					
25. Automobile graveyards and junkyards operated in accordance with state law	NO	NO	NO	PB	PB	NO
26. Piers, docks, wharves, breakwaters, causeways, marinas, bridges over twenty (20) feet in length and uses projecting into water bodies*	See Shoreland Ordinance					
a. Temporary						
b. Permanent						
27. Public and Private Schools	NO	NO	PB	PB	PB	NO
28. Church or other places of worship, parish house, rectory, convent, and other religious institutions	NO	PB	PB	PB	PB	NO
29. Hospitals, Clinics	NO	NO	PB	PB	PB	NO
30. Eleemosynary, Charitable and fraternal organizations, structures or uses	NO	NO	PB	PB	PB	NO
31. Cemeteries	NO	NO	PB	PB	PB	NO
32. Clearing for approved construction	CEO2	YES	YES	YES	YES	CEO
33. Filling or other earth-moving activity of less than ten (10) Yards	CEO	YES	YES	YES	YES	CEO
34. Filling or other earth-moving activity of more than ten (10) yards	PB	CEO1	CEO1	CEO1	CEO1	PB
35. Public Utilities	YES	YES	YES	YES	YES	YES
36. Uses similar to permitted uses	YES	YES	YES	YES	YES	YES
37. Aquaculture	PB	PB	PB	YES	PB	PB
38. Mineral Extraction	NO	PB	PB	PB	PB	NO
39. Conversion of Season Residences to year-round residence	NO	LPI	LPI	LPI	LPI	LPI
40. Private sewage disposal systems for allowed uses	NO	LPI	LPI	LPI	LPI	LPI
41. Essential Services	PB5	PB	PB	PB	PB	PB5
42. Uses similar to uses requiring a PB Permit	PB	PB	PB	PB	PB	PB

NOTES

1. Permit needed in the shore land zone only; see Shoreland Zoning Ordinance.
2. In RP not permitted within 75 feet of the normal high-water line of great ponds, except to remove safety hazards. See Shoreland Zoning Ordinance.
3. Requires permit from the Code Enforcement officer if more than 100 square feet of surface area, in total, is disturbed.
4. Provided that a variance from the setback requirement is obtained from the Board of Appeals.
5. See further restrictions in Shoreland Zoning Ordinance.
6. Except to provide access to permitted uses within the district, or where no reasonable alternative route or location is available outside the RP area, in which case a permit is required from the PB. See Shoreland Zoning Ordinance.

Section 12-313 Land Use Standards, Town Wide

These standards apply to all lands within the limits of the Town of Winter Harbor:

1. **Dimensional Standards**

Minimum Lot Size - The minimum lot size for each district shall be as follows:

- (a) Resource Protection District: one (1) acre
- (b) Residential-Recreational and Limited Residential Districts: one (1) acre
- (c) Rural District: One (1) acre
- (d) General Development District
 - Tidal Areas: 40,000 sq. ft.
 - Non-Tidal Areas: 20,000 sq. ft. without sewer; 10,000 sq. ft. with sewer
- (e) Stream Protection District (1) acre

If more than one residential dwelling unit is constructed on a single parcel, all dimensional requirements shall be met for each additional dwelling unit.

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.

2. **Space and Bulk Requirements** - Lots and structures in all districts shall meet or exceed the following minimum requirements unless more restrictive requirements are stipulated elsewhere in this Ordinance or as a condition set by the Planning Board on a Conditional Use Permit:

- (a) Frontage on Road - 100 feet
- (b) Setback of Structures from Road - 25 feet from centerline
- (c) Side Yard Width - 10 feet
- (d) Maximum Height of Structure - 40 feet Maximum
- (e) The lowest floor elevation or openings of all buildings and structures, including basements, shall be elevated at least one foot 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 flood-plain soils.

3. **Driveways** - Lots in all districts which are used for residential purposes shall be provided with a driveway of not less than ten (10) feet in width.

4. **Off-street parking** shall be provided in the amount of three hundred (300) square feet per dwelling unit. This may be accomplished by driveway space, garage space or parking lot space or any combination of the three.

5. **Cluster Development** - Cluster developments shall meet all of the following criteria:
 - (a) While individual building lots may occupy a lot smaller than that required under the minimum dimensional requirements of this Ordinance, the entire development shall meet the overall density requirements (number of dwellings per acre).
 - (b) The minimum area of land in a cluster development shall be five acres.
 - (c) All cluster developments shall require subdivision approval.
 - (d) The total area of common land within the development shall equal or exceed the sum of the areas by which any building lots are reduced below the minimum lot area normally required in the District.
 - (e) Further subdivision of common land or its use for other than non-commercial recreation or conservation, except for easements for underground utilities, shall be prohibited without subdivision review. Structures and buildings accessory to non-commercial recreational or conservation uses may be erected on the common land, subject to the issuance of a Building Permit.
 - (f) All dwelling units in a cluster development shall be connected to a suitable water supply and distribution system, at no expense to the Municipality.
 - (g) All structures which require plumbing in a cluster development shall be connected to a disposal facility which meets the standards of the State Plumbing Code at no expense to the Municipality.
 - (h) Buildings shall be oriented in accordance with the overall plan for site development.
 - (i) Set backs from abutting properties shall be twenty (20) feet.
 - (j) Set backs of structures shall be twenty-five (25) feet from all public ways.
 - (k) Total frontage on public ways shall be one hundred (100) feet per dwelling unit, located on the public way.
 - (l) Minimum building lot sized on cluster developments shall be twenty thousand (20,000) feet with on-site sewage and ten thousand (10,000) with public sewage.

6. **Commercial and Industrial Facilities** - Commercial and Industrial facilities in the rural zone having more than two thousand five hundred (2500) square feet of gross floor area and/or employing more than six (6) full-time employees shall:
 - (a) Have all buildings set back a minimum of two hundred and fifty (250) feet from the edge of the public right-of-way.
 - (b) Have all land between the facility and the public right-of-way appropriately landscaped.

7. **Existing Structures.** Any structure existing at the time of adoption of this Ordinance which is in violation of 12-313, 2 "Space and Bulk Requirements," may be expanded

horizontally or vertically but only with Planning Board approval. The structure may have only one setback, which may be defined by either the front, rear, or side of the structure. This setback will be considered as being "grandfathered" and the structure cannot encroach any further on this setback unless it is reduced by a variance from the Board of Appeals. In considering such approval of the requested expansion, the Planning Board shall evaluate the request in accordance with section 12-315, J., of this Ordinance.

8. **Campgrounds** – Campgrounds shall conform to the minimum requirements imposed under State licensing procedures and the following:
 - (a) 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.
 - (b) 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 Birch Harbor 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.
9. **Individual Private Campsites** – Individual private campsites not associated with campgrounds are allowed provided the following conditions are met:
 - (a) One campsite per lot existing on the effective date of this Ordinance, or thirty thousand (30,000) square feet of lot area whichever is less, may be permitted.
 - (b) Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall observe the setback requirements outlined in 12-313 (2) Space and Bulk Requirements.
 - (c) 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 except a canopy shall be attached to the recreational vehicle.
 - (d) 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.
 - (e) 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.
10. **Parking Areas** –
 - (a) 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.
 - (b) In determining the appropriate size of proposed parking facilities, the following shall apply:
 - i. 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.
 - ii. Internal travel aisles: Approximately twenty (20) feet wide.

11. Storm Water Runoff –

- (a) 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 stormwaters.
- (b) Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.

12. Septic Waste Disposal –

- (a) All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules, 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.

13. Essential Services –

- (a) Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.
- (b) 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.
- (c) Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

14. Mineral Exploration and Extraction.

- (a) 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.
- (b) Mineral extraction may be permitted under the following conditions:
 - i. 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 12-313(14)(c) below.
 - ii. 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 Birch Harbor 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.

- iii. Within twelve (12) months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than one hundred (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.
 - 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.
- (c) 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.

15. Agriculture

- (a) All spreading of manure shall be accomplished in conformance with the *Manure Utilization Guidelines* published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. sections 4201-4209).
- (b) 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.

16. Timber Harvesting

All timber harvesting shall be conducted in accordance with the Maine Forest Practices Act, M.R.S.A. Title 12 Chapter 805 Subchapter 3-A.

17. 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.

18. 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.

19. Archaeological Site.

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 12-314 Land Use Standards, Shoreland Areas

(Superseded by "Chapter 1000 Shoreland Zoning Ordinance")

Section 12-315 Wellhead Protection

(Superseded by "Chapter 12 Article IV Wellhead Protection Ordinance")

Section 12-316 Administration and Enforcement

A. **Code Enforcement Officer** - It shall be the duty of the Code Enforcement Officer or other person duly authorized by the Selectmen to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any of the provisions of this Ordinance are being violated, he shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal use of land or structures, removal of illegal structures or additions, alterations or structural changes thereto; discontinuance of illegal work being done; or shall take any other action authorized by this Ordinance to insure compliance with or prevent violation of its provisions.

1. A Code Enforcement Officer shall be appointed or reappointed annually by July 1st.

B. **Planning Board** - It shall be the duty of the Planning Board duly authorized by the Town of Winter Harbor in accordance with State Law, to hear and decide on such applications for Conditional Use Permits in accordance with the provisions of this Ordinance.

C. **Board of Appeals.**

1. There is hereby created a Board of Appeals of the Town of Winter Harbor consisting of five (5) members appointed by the municipal officers pursuant to the provisions of Title 30A, MRSA, Sections 2691 and 4353 as amended.
 - a. **Powers and Duties of the Board of Appeals.** The Board of Appeals shall have the following powers:
 1. **Administrative Appeals:** To 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 enforcement or administration of this Ordinance.
 2. **Variance Appeals:** to authorize variances upon appeal, within the limitations set forth in this Ordinance.

2. **Variances -** The Board of appeals may, upon written application of an affected landowner, grant a variance from the strict application of this Ordinance under the following conditions:
 - a. The strict application of the terms of this Ordinance would result in undue hardship to the applicant;
 - b. The Board shall not grant a variance unless it finds that: The proposed structure or use would meet the provisions of Section 311A except for the specific provision which has created the non-conformity and from which relief is sought; and
 - c. That the term "Undue hardship" shall mean:
 1. That the land in question cannot yield a reasonable return unless the variance is granted;
 2. That the need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood; and,
 3. That the granting of a variance will not alter the essential character of the locality.
 - d. That the hardship is not the result of action taken by the applicant or a prior owner;
 - e. That a variance is authorized only for dimensional requirements; and,
 - f. That no variance shall be granted to permit a use otherwise prohibited by this Ordinance.
 - g. The Board of Appeals shall limit any variances granted as strictly as possible in order to insure 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.
 - h. A copy of all variances granted by the Board of Appeals shall be submitted to the Department of Environmental Protection within fourteen (14) days of the decision.

3. **Appeals** - The Board of Appeals may, upon written application of an aggrieved party hear appeals from determinations of the Code Enforcement Officer and/or Planning Board in the administration of this Ordinance. The Board of Appeals may reverse the decision of the Code Enforcement Officer or Planning Board only on a finding that the decision is clearly contrary to specific provisions of this Ordinance. The Board of Appeals may authorize variances within the limitations set forth in this Ordinance. A decision of the Board of Appeals shall be issued within thirty (30) days of the receipt of the appeal or ten (10) days from the completion of a Public Hearing if one is held.
 - a. Such appeal shall be made by filing with the Board of Appeals a written notice of appeal which includes:
 1. A concise written statement indicating what relief is requested and why it should be granted.
 2. 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.
 - b. 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.
 - c. The Board of Appeals shall hold a public hearing on the appeal within thirty-five (35) days of its receipt of an appeal request.
4. **Decision by Board of Appeals.**
 - a. A majority of the board shall constitute a quorum for the purpose of deciding an appeal. A member who abstains shall not be counted in determining whether a quorum exists.
 - b. The concurring vote of a majority of the members of the Board of Appeals present and voting shall be necessary to reverse an order, requirement, decision, or determination of the Code Enforcement Officer or Planning Board, or to decide in favor of the applicant on any matter on which it is required to decide under this Ordinance, or to affect any variation in the application of this Ordinance from its state terms. The board may reverse the decision, or failure to act, of the Code Enforcement Officer or Planning Board only upon a finding that the decision, or failure to act, was clearly contrary to specific provisions of this Ordinance.
 - c. The person filing the appeal shall have the burden of proof.
 - d. The Board shall decide all appeals within ten (10) days after the close of the hearing, if one is held, and shall issue a written decision on all appeals.
 - e. 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 therefore, and the appropriate order, relief or denial thereof.

5. **Appeal to Superior Court.** An appeal may be taken within thirty (30) days after any decision is rendered by the Board of Appeals, by any party, to Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.
6. **Reconsideration.** The Board of Appeals may reconsider any decisions within thirty (30) days of its prior decision. The Board may conduct additional hearings and receive additional evidence and testimony.

D. Code Enforcement Officer Permits Required.

1. No building or other structure shall be erected, moved, added to, replaced, or structurally altered without a permit issued by the Code Enforcement Officer and no land uses or renewal of a discontinued non-conforming use shall be permitted which is not in conformance with the Schedule of Uses in this Ordinance unless the designated permit is obtained.
2. No Code Enforcement Officer permit shall be issued except in conformity with the provisions of this Ordinance and the Building Code of Winter Harbor and all other local, state, and federal laws, regulations or ordinances which are pertinent, except after written order of the Board of Appeals. Any construction authorized by the Code Enforcement Officer permit shall commence within nine (9) months and must be substantially completed within two (2) years from the date of issuance of said permit or said permit shall be deemed to have expired unless otherwise ordered by the Board of Appeals.

E. Application for Code Enforcement Officer Permit. All applications for Code Enforcement Officer permits shall be accompanied by plans drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations and dimensions of proposed buildings, structures or alterations. All applications shall be signed by the owner or owners of the property or other person authorizing the work, certifying that the information in the application is complete and correct. If the person signing the application is not the owner or lessee of the property then that person shall submit a letter of authorization from the owner or lessee. 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. The application shall include such other information as lawfully may be required by the Code Enforcement Officer to determine conformance with and provide for the enforcement of this Ordinance and the Town Code of Winter Harbor.

F. Code Enforcement Officer Actions. Within seven (7) days of the filing of an application for a Code Enforcement Officer permit, the Code Enforcement Officer shall approve, deny or refer the application to the Planning Board for a Conditional Use Permit, pursuant to the provisions of this Ordinance. His decision shall be in writing on a form designed for the purpose, and communicated directly to the applicant or his agent. One (1) copy of the Code Enforcement Officer's decision shall be filed in the Municipal Office.

G. 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 insure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Office shall also investigate 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. On an biennial basis, a summary of this record shall be submitted to the Director of Bureau of Land Quality Control within the Department of Environmental Protection.
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 landowners agent or a contractor who orders or conducts any activity in violation of this ordinance shall be punished in accordance with Title 30-A MRSA Sec.4452.

H. Conditional Use Permits.

1. All applications for a Conditional Use Permit shall be based on a written decision from the Code Enforcement Officer pursuant to the Schedule of Uses in this Ordinance.
2. The Planning Board of the Town of Winter Harbor shall hear and approve, approve with modifications or conditions, or deny all applications for a Conditional Use Permit. No Conditional Use Permit shall be authorized unless specific provisions for such Conditional Use is made in this Ordinance.
3. Upon making their decision on a Conditional Use Permit, the Planning Board shall return the application to the Code Enforcement Officer with orders to issue a permit or to issue a denial of a permit. The Code Enforcement Officer shall be responsible

for enforcing any conditions which may be made a part of any Conditional Use Permit.

I. Application Procedure for Conditional Use Permit.

1. Upon the decision of the Code Enforcement Officer that a Conditional Use Permit is required by this Ordinance, the Code Enforcement Officer shall notify the applicant and forward a copy of his written decision, the application and all other pertinent information to the Planning Board.
2. The Planning Board shall notify the applicant within fourteen (14) days of receipt of the application if further information is required in order to make a decision on the application. The Planning board may require any information which is lawful and reasonable to be provided by the applicant in order to make their determination based on the criteria contained in this Section. This required information may include, but is not limited to, the following:
 - a. A plan of the area showing contours at intervals to be determined by the Planning Board and referred to Mean Sea Level, high water elevation, groundwater conditions, bedrock, slope and/or vegetation cover.
 - b. A soils report identifying the soils boundaries and names in the proposed development with the soils information super-imposed upon the plot plan in accord with the USDA Soil Conservation Service National Cooperative Soil Classification.
 - c. Location of existing and proposed buildings, parking areas, traffic access, driveways, walkways, piers, open spaces or other structures.
 - d. Plans of structures, sewage disposal facilities and water supply systems.
 - e. Other pertinent information necessary to determine if the proposed use meets the provisions of this Ordinance.
3. Depending on the possible adverse impacts or the amount of public interest in a given proposal, the Planning Board may, upon its own discretion or at the request of interested parties, convene a public hearing on a Conditional Use application within thirty (30) days of determining that the applicant has supplied all requested information.
4. Within twenty (20) days of receiving a completed application, or within ten (10) days of a public hearing, the Planning Board shall reach a decision on a Conditional Use Permit and shall inform in writing, the applicant and the Code Enforcement Officer of its decision and reasons therefore.
5. Upon notification of the decision of the Planning Board, the Code Enforcement Officer shall immediately issue, issue with condition prescribed by the Planning Board or deny the Conditional Use Permit.
6. The applicant shall have the burden of proof that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance.

J. Factors Applicable to Conditional Uses. In considering a Conditional Use Permit, the Planning Board shall evaluate the immediate and long-range effects of the proposed use upon the following:

1. The maintenance of safe and healthful conditions;

2. The prevention and control of water pollution and sedimentation;
 3. The control of building sites, placement of structures and land uses to provide for adequate sunshine and fresh air for neighboring land uses;
 4. The protection of spawning grounds, fish, aquatic life, birds and other wildlife habitat;
 5. The conservation of shore cover, visual as well as actual points of access to inland and coastal waters and natural beauty;
 6. The compatibility of the proposed use with adjacent land uses;
 7. The need of a particular location for the proposed use;
 8. Access to the site from existing or proposed roads; especially for emergency and town services such as fire equipment or snowplow;
 9. The location of the site with respect to flood plains and flowery of rivers and streams;
 10. The amount and types of wastes to be generated by the proposed use and the adequacy of the proposed disposal system;
 11. The impact of the proposed use on the land and adjacent water bodies and the capability of the land and water to sustain such use without degradation;
 12. Existing topographic and drainage features and vegetative cover on the site;
 13. The erosion potential of the site based on the degree and direction of slope, soils type and vegetative cover;
 14. The impact of the proposed use on transportation facilities;
 15. The impact of the proposed use on the ability of the community to provide community services;
 16. The impact of the proposed use on local water supplies;
 17. Possible nuisance conditions that may arise from the proposed use;
 18. The impact of the proposed use on traffic congestion and safety particularly concerning children;
 19. The compatibility of the proposed use on the historical archaeological land architectural character of the community;
 20. The compatibility of the proposed use with the goals and objectives of the adopted Comprehensive Plan for Winter Harbor, Maine.
 21. The proposed use is in conformance with Sections 12-313 Land Use Standards, Town Wide and Chapter 1000 Shoreland Zoning Ordinance Section 15 Land Use Standards.
- K. Conditions Applicable to Conditional Uses.** Upon consideration of the factors listed above, the Planning Board may attach such conditions, in addition to those required elsewhere in this Ordinance, that it finds necessary to further the purpose of this Ordinance. Violation of any of these conditions shall be a violation of this Ordinance. Such conditions may include, but is not limited to, specifications for;
1. Type of vegetative cover;
 2. Increased setbacks or dimensional requirements;

3. Specified sewage or other waste disposal facilities;
4. Specified water supply facilities;
5. Landscaping and planting screens;
6. Periods of operation;
7. Operational controls;
8. Professional inspection and maintenance;
9. Off-street storage and display requirements;
10. Specified storage and display requirements;
11. Sureties;
12. Restrictive Covenants;
13. Locations of piers, docks, parking areas and signs;
14. Type of Construction;
15. Any other conditions necessary to fulfill the purposes of this Ordinance.

L. **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 any 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 complete.

M. **Plumbing Permits Required** - No building or other structure shall be erected, moved, added to or structurally altered without a Plumbing Permit issued by the Plumbing Inspector for the Town of Winter Harbor if said erection, moving, adding to or structural alteration involves the plumbing of said structure. Further, no Code Enforcement Officer Permit or Conditional Use Permit shall be issued except in conformity with the provisions of this Ordinance, and any and all State Statutes which are relevant and pertinent thereto;

N. **Violation** - The Code Enforcement Officer is authorized to institute or cause to be instituted, upon approval by the municipal officers, in the name of the Town of Winter Harbor and all actions, legal and equitable, that may be appropriate or necessary for the enforcement of this Ordinance, provided, however, that this Article shall not prevent any person entitled to equitable relief from enjoining any act contrary to the provisions of this Ordinance.

O. **Penalty** - Any person, firm or corporation, being the owner or occupant of, having control of, or use of, any building or premises, or part thereof, who violates any of the provisions of this Ordinance shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not less than ten dollars (\$10) and not more than one hundred dollars (\$100) for each offense. Each day such violation continues shall constitute a separate offense.

Section 12-317 Definitions

Accessory Use or Structure - A use or structure of a nature customarily incidental and subordinate to those of the principle use or structure, not to include any structure with two hundred and fifty (250) cubic feet of total volume or less. A use or structure which is incidental and subordinate to the principal use or structure. 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 Parties -A person whose land is directly or indirectly affected by the grant 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 a group of five (5) or more citizens of the municipality who represent an interest adverse to the grant or denial of such permit or variance.

Agriculture - the production, keeping or maintenance for sale or lease, of plants and/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 and green house products. Agriculture does not include forest management and timber harvesting activities.

Alteration - Any change, addition or modification in construction, or any change in the structural members of a building, such as bearing walls, columns, beams or girders.

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

Aquifer - A permeable geologic formation, either rock or sediment, that when saturated with groundwater is capable of transporting water through the formation.

Automobile Graveyards and Junkyards - A yard, field or other area used as a place of storage for three (3) or more unserviceable, discarded, worn-out or junked motor vehicles. A yard, field, or other area used as a place of storage for: discarded, worn-out or junked plumbing, heating supplies, household appliances and furniture; discarded scrap junked lumber; old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber or plastic debris, waste and all scrap iron, steel and other scrap ferrous or nonferrous material; and garbage dumps, waste dumps and sanitary fills.

Best Management Practice - Procedures designed to minimize the impact of certain activities or land uses on groundwater quality and quantity.

Billboard - A sign, structure or surface which is available for advertising purposes for goods or services rendered off the premises.

Board - Refers to the Town of Winter Harbor Planning Board.

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.

Boathouse - A non-residential structure designed for non-commercial purposes.

Building - A structure for the support, shelter or enclosure of persons, animals, goods or property of any kind.

Building Height - The vertical distance between the highest point of the roof and the average grade of the ground adjoining the building.

Campground - Any premises established for overnight use for the purpose of temporary camping, and for which a fee is charged. 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.

Chemical Bulk Storage - Storage of a chemical or chemicals in a container or containers larger than those intended for normal homeowner or retailer purposes. Proper, non-commercial, homeowner use of chemicals is not included.

Coastal Wetlands - Any swamp, marsh, bog, flat or other land above extreme low water which is subject to tidal action. All tidal and sub-tidal lands; all lands below any identifiable debris line left by tidal action; 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 which is subject to tidal action during the maximum spring tide level as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

Code Enforcement Officer - A person appointed by the Municipal Officers to administer and enforce this Ordinance.

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.

Conditional Use - A use permitted only after review and approval by the Planning Board. A Conditional Use is a use that would not be appropriate without restriction but which, if controlled under the provisions of this Ordinance, would promote the purposes of this Ordinance. Such uses may be permitted if specific provision for such Conditional Use is made in this Ordinance.

Conforming Use - A use of buildings, structures or land which complies with all applicable provisions of this Ordinance.

Constructed - Includes built, erected, altered, reconstructed, moved upon, or any physical operations of the premises which are required for construction. Excavation, fill, drainage, and the like, shall be considered a part of construction.

Construction and Commercial Equipment & Vehicle Storage - Storage of construction equipment or other commercial vehicles in excess of thirty (30) consecutive days in which the equipment is not used.

Construction/Demolition - Construction or demolition of facilities, buildings, etc. associated with the land uses or activities.

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

District - A specified portion of the municipality, delineated on the Official Zoning Map, within which certain regulations and requirements or various combinations thereof apply under the provisions of this Ordinance.

Drinking Water Standards, Primary and Secondary - Standards for drinking water as stated in the "State of Maine Rules Relating to Drinking Water", Maine Department of Human Services.

Driveway - a vehicular access-way less than five hundred (500) feet in length serving two lots or less.

Dwelling Unit - A room or group of rooms designed and equipped for use as permanent, seasonal or temporary living quarters for only one (1) family or person. This term shall include mobile homes, modular homes, and stick built homes.

Dump - (see landfill)

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.

Excavation – (see construction)

Expansion of a structure - an increase in the floor area or volume of a structure, including all extensions such as, but not limited to attaches: decks, garages, porches and greenhouses.

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

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

Fill – (see construction)

Floor area - the sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks.

Floor Drain - An opening in the floor that leads to the ground and/or is not permitted under other State, Federal, or local regulations. Work sinks which lead to such drains are included.

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.

Foundation - the supporting substructure of a building or other structure including but not limited to basements, slabs, sills, posts or frost walls.

Freshwater wetland -freshwater swamps, marshes, bogs and similar areas which are:

1. of ten or more contiguous acres; or of less than 10 contiguous acres and 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.

Frontage, Shore - The horizontal distance measured in a straight line, between the intersections of the side lot lines with the shoreline at the normal high water line.

Fuel Oil Distributor, Fuel Oil Storage - The storage of fuel for distribution or sale. Storage of fuel oil not for domestic use, i.e., not in tanks directly connected to burners.

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 storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aides, basins and channels, 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 marine or tidal waters.

Gas Station, Service Station - Any place of business at which gasoline, other motor fuels or motor oil are sold to the public for use in a motor vehicle, regardless of any other business on the premises.

Grade - In relation to buildings, the average of the finished ground level at the center of each wall of a building.

Great Pond - any inland body of water which in a natural state has a surface area in excess of ten (10) 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.

Ground water - the water continued within the interconnected pores, cracks or fractures located below the water table of a confined or unconfined aquifer.

Hazardous Material - Any gaseous, liquid or solid materials, or substances designated as hazardous by the Environmental Protection Agency and/or the Maine Department of Environmental Protection.

Hazardous Waste - Any substance identified under chapter 850, Identification of Hazardous Wastes, of the rules of the State of Maine, Department of Environmental Protection, effective date July 1, 1980, including revisions or amendments thereto, and any radioactive waste material which means any solid, liquid, or gas residue, including but not limited to spent fuel assemblies prior to processing, remaining after the primary usefulness of the radioactive material has been exhausted and containing nuclides that spontaneously disintegrate or exhibit ionizing radiations.

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

Home Occupation - An occupation or profession which is customarily carried on in a dwelling unit or structure accessory to a dwelling unit; carried on by a member of the family residing in the dwelling unit; and clearly incidental and secondary to the use of the dwelling unit for residential purposes.

Horticulture - (see agriculture)

House Trailers - A vehicle similar to a mobile home, but which does not have a toilet or bathtub or shower.

Inert Fill - Material placed on or into the ground as fill that will not react chemically with soil, geologic material, or groundwater.

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 gravel pads, parking areas, fire places, or tent platform.

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

Industrial Waste - Wastes resulting from the processes employed in industrial manufacturing, trade, or business establishments.

Intensive Open Space Uses -Uses of open space which have the potential, because of their duration, frequency, or nature, to significantly impact the environment, particularly the groundwater quality and quantity.

Landfill - An area used for the placement of solid waste, liquid waste or other discarded material on or in the ground.

Lagoon - An artificial enlargement of a water body, primarily by means of dredging and excavation.

Lot - A parcel of land in single ownership, described in a deed, plot or similar legal document.

Lot Area - The total horizontal area within the lot lines.

Lot, Corner - A lot with at least two (2) contiguous sides abutting upon a street.

Lot Coverage - The percentage of the lot covered by all structures.

Lot of Record - A parcel of land, a legal description of which or the dimensions of which are recorded on a document or Map on file with the County Register of Deeds or in common use by Town or County Officials.

Lot, Shorefront - any lot abutting a pond, river or salt-water body as defined herein.

Marina - A shorefront commercial facility with the provisions for one (1) or more of the following; boat storage, boat launching or the sale of supplies or services for watercraft or their equipment and accessories. 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, boat 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.

Mining or Mineral Extraction - The removal of geologic materials such as soil, topsoil, loam, sand, gravel, clay, metallic ores, rock, peat, or other like material from its natural location and transportation of the product removed away from the extraction site.

Mobile Home - Structure designed as a dwelling unit, and not considered as a recreation vehicle, with or without a permanent foundation containing kitchen facilities, including major appliances and furniture, with plumbing and electrical connections provide for attachment to outside systems; and designed to be transported after fabrications on its own wheels. Such structures shall meet or exceed the National Manufactured Home Construction & Safety Act of 1974 (P.L. 3-383, Title VI, as amended).

Mobile Home Park - A plot of land laid out to accommodate at least two (2) mobile homes.

Non-Conforming Building, Structure or Use - A building, structure or use of land, or portion thereof, existing at the effective date of adoption or amendment of this Ordinance which does not conform to all applicable provisions of this Ordinance.

Normal high-water line - that line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or change in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. In the case of wetlands adjacent to Birch harbor Pond, the normal high-water line is the upland edge of the wetland, and not the edge of the open water.

Nursery – (see agriculture)

Open-Space Use - A use not involving a structure; earth-moving activity; or removal or destruction of vegetative cover, spawning grounds, or fish, aquatic life, bird and other wildlife habitat.

Park - Land area set aside for public recreation, conservation, wildlife, or other similar purpose.

Parking Space - A minimum of three hundred (300) square feet, exclusive of drives, aisles or entrances, fully accessible for the storage or parking entity.

Paving – (see construction)

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.

Pesticide, Herbicide Bulk Storage - Storage of herbicides or pesticides intended for sale or intended for application on commercial premises or intended for application on cash crops. Homeowner storage or storage by non-commercial gardeners is not included.

Piers, Docks, Wharves, Breakwaters, Causeways, Marinas, Bridges Over Twenty (20) Feet in Length, and Uses Projecting Into Water Bodies -

A. Temporary - Structures which remain in the water for less than even (7) months in any period of twelve (12) consecutive months.

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

Premises - One (1) or more lots which are in the same ownership and are contiguous or separated only by a road or water body, including all buildings, structures and improvements.

Principal Use - The primary use to which the premises are devoted, and the main purpose for which the premises exist.

Principal Structure - A building other than one which is used for purposes wholly incidental or accessory to the use of another building on the same premises.

Privy - A pit in the ground into which human excrement is placed.

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 or public entity.

Public Utility - Any person, firm, corporation, municipal department, board or commission authorized to furnish gas, steam, electricity, waste disposal, communications facilities, transportation or water to the public.

Recent flood plain 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 (RV) - A vehicle or vehicular attachment designed for temporary sleeping or living quarters for one (1) or more persons, which is not a dwelling and which may include a pick-up camper, travel trailer, tent trailer and motor home. 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 discharge 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. The term shall include mobile homes, but not recreational vehicles.

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.

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

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

Salt meadow - Areas which 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 cord grass (*Spartina patens*) and black rush; common three-square occurs in fresher areas.

Salt or Sand/Salt Piles (covered) - Storage of salt or sand/salt mix intended for municipal, commercial or other use beneath a roof or other structure capable of preventing precipitation from reaching the salt or Sand/salt.

Salt or Sand/Salt Piles (uncovered)- Storage of any amount of salt or sand/salt mix, for any purpose, without a roof or other structure capable of preventing precipitation from reaching the salt or sand/salt.

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 (1000) 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 (1000) feet in length.

Setback - The minimum horizontal distance from a lot line or roadway centerline to the nearest part of a structure. The nearest horizontal distance from the normal high-water line to the nearest part of a structure, road, parking space or other regulated object or area.

Setback from water - The minimum horizontal distance from the normal high water line to the nearest part of a structure.

Shore frontage - the length of a lot bordering on a water body measured in a straight line between the intersections of the lot lines with the shoreline at a normal high-water elevation.

Shoreland zone or Shoreland Area - the land area located within two hundred and fifty (250) feet, horizontal distance, of the normal high-water line of any great pond, or saltwater body; within 250 feet of the upland edge of a coastal or freshwater wetland; or within seventy-five (75) feet of the normal high-water line of a stream.

Silviculture – (see agriculture)

Sign, Off-Premise - A name, identification, description, display or illustration which is affixed to, painted or represented, directly or indirectly upon a building, structure, parcel or lot and which related to an object, product, place, activity, person, institution, organization or business which is located on some other premises.

Sign, On Premise - A name, identification, description, display or illustration which is affixed to, painted or represented, directly or indirectly upon a building, structure, parcel or lot and which related to an object, product, place, activity, person, institution, organization, or business on the premises.

Sludge - Residual material produced by water or sewer treatment processes, industrial processes, or domestic septic tanks.

Sludge Utilization - The spreading of sludge on the ground or other use of sludge which might expose surface or groundwater to the sludge.

Snow Dump - A location to which snow is transported and dumped by commercial, municipal, or State snow-plowing operations.

Solid Waste - Discarded solid material with insufficient liquid content to be free flowing. This includes but is not limited to rubbish, garbage, scrap materials, junk, refuse, inert fill materials and landscape refuse.

SPCC Plan - Spill Prevention Control and Countermeasure Plan as described in 40CFR, Part 112 of Federal Oil Pollution Prevention Regulations.

Storm water Drainage - A sewer or other system for conveying surface runoff due to storm events and unpolluted ground or surface water, including that collected by cellar drains, but excluding sanitary sewage and industrial waste.

Storm water Impoundment - Any structure designed and constructed to contain storm water runoff.

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 edition of a United State Geological Survey 7.5 minute series topographic Map, or if not available, a 15-minute series topographic Map, to the point where the body of water becomes a river.

Structure - Anything built for the support shelter, or enclosure of persons, animals, goods, or property of any kind, exclusive of fences.

Subdivision - A subdivision shall be defined as stated in Title 30-A, MRSA, Section 4401, as amended.

Subdivision Cluster - A residential subdivision wherein the dwelling does not occupy a lot meeting the minimum dimensional requirements of this Ordinance for the district in which it is located but where the overall density (number of dwellings per acre) does not exceed that required by such minimum lot size requirements. This shall include Mobile Home Parks.

Substantial start - completion of thirty (30) percent of a permitted structure or use measured as a percentage of estimated total cost.

Subsurface injection – (see subsurface wastewater disposal)

Subsurface sewage disposal system - a collection of treatment tank(s), disposal area(s), holding tank(s) and pond(s), surface spray system(s), cesspool(s), well(s), surface ditch(es), alternative toilet(s), or other devices and associated piping designed to function as a unit for the purpose of disposing of wastes or wastewater on or beneath the surface of the earth. The term shall not include any wastewater discharge system licensed under 38 MRSA Section 414, any surface wastewater disposal system licensed under 38 MRSA Section 413 Subsection 1-A, or any public sewer. The term shall not include a wastewater disposal system designed to treat wastewater which is in whole or in part hazardous waste as defined in 38 MRSA Chapter 13, subchapter 1.

Subsurface Wastewater Disposal System - A collection of treatment tank(s), disposal area(s), holding tank(s) and pond(s), surface spray system(s), cesspool(s), well(s), surface ditch(es), alternative toilet(s), or other devices and associated piping designed to function as a unit for the purpose of disposing of wastes or wastewater on or beneath the surface of the earth. The term shall not include any wastewater discharge system licensed under 38 MRSA Section 414, any surface wastewater disposal system licensed under 38 MRSA section 413, Subsection 1-A, or any public sewer, sewerage system, or wastewater treatment plant.

Sustained slope - a change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.

Timber Harvesting - The cutting and removal of trees from their growing site, and the attendant operation of cutting and skidding machinery but not construction or creation of roads. Timber harvesting does not include the clearing of land for approved construction.

Transfer station - Facility designed for temporary storage of discarded material intended for transfer to another location for disposal, re-use, and/or processing.

Tributary stream - a channel between defined banks created by the action of surface water, whether intermittent or perennial, and which is characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of topsoil containing waterborne deposits on exposed soil, parent material or bedrock, and which flows to a water body or wetland as defined. 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.

Underground Storage Tank - As defined by State of Maine regulations published by the Maine Department of Environmental Protection.

Upland edge - The boundary between upland and wetland.

Use - The purpose for which land or a structure is arranged, designed, or intended, or for which land or structure is or may be occupied.

Utility Corridor - Right-of-way, easement, or other corridor for transmission wires, pipes or other facilities, for conveying energy, communication signals, fuel, water, wastewater, etc..

Vegetation - all live trees, shrubs, ground cover, and other plants including without limitation, trees both over and under 4 inches in diameter, measured at 4 ½ above ground level.

Volume of a structure - the volume of all portions of a structure enclosed by the roof and fixed exterior walls as measured from the exterior walls as measured from the exterior faces of these walls and roof.

Waste disposal, Industrial/Commercial – (see industrial waste)

Wastewater - Any combination of water-carried wastes from institutional, commercial and industrial establishments, and residences, together with any storm, surface or groundwater as may be present.

Wastewater Treatment Plant - Any arrangement of devices and structures used for treating wastewater.

Water body - any great pond, stream or tidal area.

Water Crossing - any project extending from one bank to the opposite bank of a river or stream, whether under, through, or over the water course. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintained work on these crossings.

Watershed - Land lying adjacent to water courses and surface water bodies which creates the catchment or drainage area of such water courses and bodies; the watershed boundary is determined by connecting topographic high points surrounding such catchment or drainage areas.

Wellhead - The specific location of a well (a hole or shaft dug or drilled to obtain water) and/or any structure built over or extending from a well.

Wellhead Protection Area – A zone, consisting of two (2) districts, delineated according to Article III, Section 12-315 of this Ordinance.

Well, abandoned – A shaft, casing, tile, hole, or pipe placed, drilled or dug in the ground for the extraction or monitoring of groundwater that has not been used for a period of two (2) consecutive years.

Well, Existing or New – A shaft, casing, tile, hole, or pipe placed, drilled, or dug in the ground for extraction or monitoring of groundwater.

Wetland - a freshwater or coastal wetland.

Wetlands associated with great ponds and rivers - wetlands contiguous with or adjacent to a great pond or river, and which during normal high water, are connected by surface water to the great pond or river. Also included are wetlands which are separated from the great pond or river by a berm, causeway, or similar feature less than 100 feet in width, and which have a surface elevation at or below the normal high water line of the great pond or river. Wetlands associated with great ponds or rivers are considered to be part of that great pond or river.

Historical Note: Some portions adopted December 14, 1981 at a Special Town Meeting.

Amendments

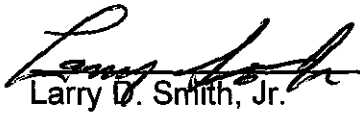
March 2, 1987	Section 12-311, B.2.
May 25, 1988	Section 12-306
	Section 12-311, 13. b.
	Section 12-311, 10.
	Section 12-312, C., 2.
	Section 12-313
	Section 12-311, A., 2.
May 21, 1990	Section 12-311, B.
	Section 12-310
November 5, 1991	All Sections except for 12-303
June 16, 2004	All Sections
October 28, 2004	All Sections
February 27, 2013	All Sections

Zoning Ordinance

Revised Ordinance adopted and accepted on **February 27, 2013.**

BOARD OF SELECTMEN


Terry D. Bickford


Larry D. Smith, Jr.


William R. Faulkingham

CHAPTER XIII

TRAFFIC AND PARKING ORDINANCE

Section 13-101 Authority and Enactment

The municipal officers of the Town of Winter Harbor, Maine enacted this Ordinance on July 5, 1983, following a public hearing held on June 20, 1983, under the authorization of Title 30 MRSA Section 2151 Subsection 2-C, 3A.

Section 13-102 Purpose

The purpose of this Ordinance is to insure the public safety; to facilitate snow removal and sanding, fire suppression; and to relieve traffic hazards and congestion through the regulation of parking and vehicular traffic flow in the Town of Winter Harbor, Maine.

Section 13-103 Restricted Areas

No vehicle shall be parked, stopped, or allowed to stand, whether occupied or not, without displaying the proper permit, within any of the following designated spaces on Winter Harbor Town roads and ways.

- A. Within ten (10) feet of any Fire Hydrant.
- B. Within six (6) feet of any intersection or junction of public roads or ways.
- C. Within three (3) feet of the entrance of any driveway or alley.
- D. On a designated sidewalk.
- E. In front of a Fire Station exit.
- F. In an area marked or posted for "NO PARKING" by the Road Commissioner upon approval of the municipal officers.
- G. In front of any public owned building or facility so as to block or restrict emergency access and exits.
- H. In a marked, Reserved Handicapped Parking Area.
- I. In any area at the town wharf which is marked as restricted to town residents only. For the purpose of this ordinance a "resident" is a person who pays either automobile or boat excise tax to the Town of Winter Harbor and who is dwelling within the Town limits. Parking permits will be issued on the basis of one per registered boat or motor vehicle.

Section 13-104 Obstruction of Traffic

No vehicle shall be parked, stopped, or allowed to stand, whether occupied or not, in such a way as to obstruct traffic or to create a traffic hazard. Vehicles parked in such a manner may be removed by the authorized agents of the Town of Winter Harbor under the direction of the Police Chief at the owner's expense.

Section 13-105 All Night Parking

No vehicle shall be parked or left standing on any street, road or public way in the Town of Winter Harbor between the hours of 11:00 p.m. or 6:00 a.m. of each day during the period from November 1 to April 1 of each year. No parking at the Town wharf after 10:00 p.m. unless engaged in fishing operations.

Section 13-106 Emergency Vehicles

- A. No unauthorized vehicles shall park, stop, or be allowed to stand within one hundred (100) feet of any fire truck, ambulance, police car or any other authorized, marked emergency vehicle during the performance of emergency duty. Such emergency vehicles shall indicate emergency response activities by displaying appropriate and recognizable flashing lights attached to such vehicles.
- B. No person shall park, stop or allow a vehicle to stand within any area in excess of the one hundred (100) feet perimeter described in Section 13-105 (A) of this Chapter when such extra perimeter shall be cordoned off by authorized emergency response personnel.

Section 13-107 Designation and Marking of Restricted Areas

The Road Commissioner is authorized to post "NO PARKING" signs or to mark by painted lines or marks on streets, sidewalks, and crosswalks the Restricted Parking areas described in Section 13-103 (A-I) of this chapter.

Section 13-108 Enforcement.

The Police Chief of the Town of Winter Harbor and any police officers under the supervision of the Police Chief shall be responsible for the enforcement of this Ordinance as provided herein.

Section 13-109 Reporting Violations and Penalties

- A. Information reported. It shall be the responsibility of the Chief of Police and police officers to report the following information with respect to vehicles parked in violation of the Ordinance:
 - 1. The State Vehicle Registration Number of the vehicle parked in violation.
 - 2. The time, date and location of the vehicle parked in violation.
 - 3. Any other facts pertinent to the understanding of the circumstances attending such violation.
- B. Notice to owner of operator. The Police Chief or police officer shall also attach to such violating vehicle a notice to the owner or operator thereof, that such vehicle has been parked in violation of a provision of this Ordinance and instructing such owner or operator to report to the Winter Harbor Town Office in regard to such violation or pay the fine imposed by Section 13-109 (C) in the manner and time frame therein prescribed.
- C. Time limit for payment. Each owner or operator shall, within three (3) business days of the time when such notice was attached to such vehicle, pay to the Treasurer of the Town of Winter Harbor as a penalty for and in full satisfaction of such violation, the sum of twenty-five dollars (\$25.00) for the first violation, fifty dollars (\$50.00) for the second violation, and seventy-five dollars (\$75.00) for the third violation, in U.S. cash or currency. The failure of such owner or operator to make such payment within three (3) business days shall render such owner or operator subject to the penalties as provided in Section 13-109 (D), below, for the violation of this Ordinance. For the purposes of this Ordinance,

the person in whose name the vehicle is registered shall be considered to be the owner.

D. Penalty. Any person who shall violate any of the provisions of this Ordinance, and any person who aids or assists therein, including but limited to the owner of any vehicle that is in the possession of another with the owner's consent, express or implied, shall upon conviction thereof by the Maine District Court, be subject to a fine not to exceed seventy-five dollars (\$75.00) for each violation or offense. All fines and forfeitures under this Chapter shall be payable to the Town of Winter Harbor, Maine.

Section 13-110 Severability

The invalidity of any clause, portion, or provision of this Ordinance shall not invalidate any other clause, portion, or provision.

Section 13-111 Interchangeable Terms

Whenever the terms "Chapter" or "Ordinance" are found herein, the terms shall have the same meaning and intent and shall be interchangeable. "Chapter" shall refer to Chapter XIII of the Winter Harbor Town Code, as amended and "Ordinance" shall refer to the Winter Harbor "Traffic and Parking Ordinance" as amended and incorporated as Chapter XIII of the Winter Harbor Town Code.

Section 13-112 Amendment Procedure

The municipal officers may, by majority vote, amend this Chapter after public hearing and reasonable notice to the public.

Section 13-113 Effective Dates

This Chapter shall become effective immediately upon adoption by a majority vote of the municipal officers as per Section 13-101. Any subsequent amendment(s) shall become effective immediately upon adoption by a majority vote of the municipal officers as per Section 13-112.

Historical Note: Amendments to this Ordinance were adopted by the Board of Selectmen on December 18, 1995.

Chapter 5
Curfew Ordinance

Section 5-101 Enactment

This ordinance was enacted at a special town meeting on March 15, 1900.

Section 5-102 Purpose

The purpose of this ordinance is to assure the safety, health, and welfare of the Town's children by restricting their access to public ways and establishments during the evening hours.

Section 5-103 Curfew Provisions

Be it ordained by the town of Winter Harbor, as follows:

- A. No child under fifteen years of age shall be or remain upon any street, alley or lane or in any public place, store, shop, restaurant, saloon or drinking place in this town in the night time after nine o'clock in the afternoon from May first to October thirty-first, both inclusive, nor after the hour of eight o'clock in the afternoon from November first to the last day of April, both inclusive, of each year, unless accompanied by a parent, guardian or other person having the legal custody of such minor, or the employment of such minor makes it necessary to be upon such street, alley or lane or in such public place, store, shop, restaurant, saloon or drinking place after said hours.

And to aid in the practical enforcement of this ordinance it is hereby made the duty of the janitor of the school house or his successors in office to cause three successive strokes of the school house bell to be sounded each night at the hours above named.

- B. Unless a reasonable necessity exists therefore, no parent, guardian or other person having the legal custody of any minor under fifteen years of age shall allow or permit such minor while in such legal custody, to be or remain upon such street, alley or land or in such public place, store, shop, restaurant, saloon or drinking place in this town, nor shall any store, shop, restaurant, saloon-keeper or the keeper of any drinking place or person in charge thereof for the time being, allow or permit such minor to be or remain in or upon his premises within the hours prohibited in the preceding section.

Section 5-104 Violations and Enforcement

Violations of any of the provisions of this ordinance shall be punished by a fine of not less than one nor more than five dollars to be recovered for the use of said town; and it shall be the duty of the constables of said town to enforce the observance of the provisions of this ordinance and to prosecute any violation thereof before any Trial Justice or Municipal Court in the County of Hancock, State of Maine. Any person, however, citizen of this town, may make the complaint and prosecute for any violation of the provisions of this ordinance if the constables shall neglect or fail to do so within five days after such violation.

Historical Note: Enacted at a special town meeting, March 15, 1900.

Chapter 17

BARKING OR HOWLING DOGS

No owner or person having custody of any dog kept within the legal limits of the Town of Winter Harbor shall allow such dog to unnecessarily annoy or disturb any person by continued or repeated barking or other loud or unusual noises.

Upon written complaint by the person disturbed, signed and sworn to, any constable of the Town of Winter Harbor or duly qualified law enforcement official may investigate and may give written notice to the owner or keeper of such dog that such annoyance or disturbance must cease. The warning shall be made part of the complaint.

Thereafter, upon continuance of such annoyance or disturbance, such owner shall be guilty of a civil violation and upon conviction thereof shall be punished by a fine of \$25.00 for the first offense. Each additional conviction after the first conviction shall be punished by a fine of \$50.00. All fines so assessed shall be recovered for the use of the Town of Winter Harbor through the District Court.

Historical note: Adopted at Town Meeting, August 2, 1993



TOWN OF WINTER HARBOR

PO BOX 98, 23 HARBOR ROAD
WINTER HARBOR, MAINE
04693-0098

TEL: 963-2235 FAX: 963-2140
email: winterharbortown@myfairpoint.net

Town of Winter Harbor Animal Waste Control Ordinance

SECTION 101: PURPOSE

The purpose of this ordinance is to require all animals in the Town of Winter Harbor to be cared for by their owner or keeper at all times so that they will not damage property or create a public health threat.

SECTION 102: DEFINITIONS

Animal-Dog: Any of large and varied groups of domesticated animals in the canine family, for the purpose of this ordinance.

SECTION 103: AUTHORITY

This ordinance is prepared and adopted pursuant to the authority granted under the Home Rule provisions of the Constitution of the State of Maine, Article VIII-A and the Home Rule provisions of Title 30, MRSA, Section 3001, as amended, and in accordance with the goals and policies as stipulated by the Comprehensive Planning process of the Town of Winter Harbor.

SECTION 104: CONTROL OF ANIMAL WASTE

An owner must remove and dispose of any feces left by his/her animal on any sidewalk, street, beach, public property, or private property (other than the property of the owner of the animal or of a person who has consented to the presence of the animal on his or her property) and deposit such feces into appropriate litter receptacle on owner's property. An owner whose animal is present on any property from which the animal's feces is required to be removed pursuant to this section must have in his or her possession a plastic bag or similar container for collecting and removing the feces. This regulation shall not apply to any person who, by reason of physical handicap, is unable to comply with the requirement.

SECTION 105: FEE

An owner failing to remove animal feces may be fined \$25 per occurrence.

An owner failing to have appropriate container for feces removal may be fined \$20 per occurrence.

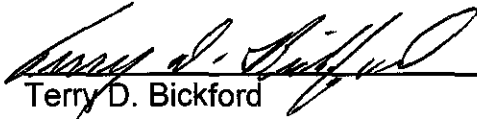
**Town of Winter Harbor
Animal Waste Control Ordinance**

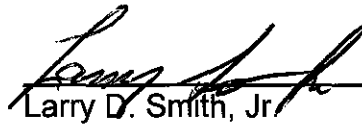
SECTION 106: ENFORCEMENT

The Winter Harbor Police Department shall be responsible for handling all violations of this ordinance.

Ordinance adopted and accepted on **February 27, 2013**.

BOARD OF SELECTMEN


Terry D. Bickford


Larry D. Smith, Jr.


William R. Faulkingham

Chapter 1000: SHORELAND ZONING ORDINANCE

April 22, 2009

Table of Contents

1. Purposes.....	1
2. Authority.....	1
3. Applicability.....	1
4. Effective Date.....	1
A. Effective Date of Ordinance and Ordinance Amendments.....	1
B. Sections 15(O) and 15(O-1).....	2
5. Availability.....	2
6. Severability.....	2
7. Conflicts with Other Ordinances.....	2
8. Amendments.....	2
9. Districts and Zoning Map.....	2
A. Official Zoning Map.....	2
10. Interpretation of District Boundaries.....	3
11. Land Use Requirements.....	3
12. Non-conformance.....	3
A. Purpose.....	3
B. General.....	3
C. Non-conforming Structures.....	3
D. Non-conforming Uses.....	5
E. Non-conforming Lots.....	6
13. Establishment of Districts.....	6
A. Resource Protection District.....	7
B. Limited Residential District.....	7
C. Residential/Recreational District.....	7
D. General Development District.....	7
E. Rural District.....	8
F. Stream Protection District.....	8
14. Table of Land Uses.....	8
15. Land Use Standards.....	12
A. Minimum Lot Standards.....	13
B. Principal and Accessory Structures.....	13
C. Piers, Docks, Wharves, Bridges and Other Structures and Uses Extending Over or Below the Normal High-Water Line of a Water Body or Within a Wetland.....	15
D. Campgrounds.....	16
E. Individual Private Campsites.....	16
F. Commercial and Industrial Uses.....	17
G. Parking Areas.....	17
H. Roads and Driveways.....	18
J. Storm Water Runoff.....	20
K. Septic Waste Disposal.....	20
L. Essential Services.....	20
M. Mineral Exploration and Extraction.....	20
N. Agriculture.....	21
O-1. Timber Harvesting – Statewide Standards.....	23
P. Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting.....	30
Q. Erosion and Sedimentation Control.....	32
R. Soils.....	33
S. Water Quality.....	33
T. Archaeological Site.....	34
U. Beach Construction.....	34

Town of Winter Harbor

16. Administration.....34
 A. Administering Bodies and Agents.34
 B. Permits Required.34
 C. Permit Application.....34
 D. Procedure for Administering Permits.....35
 E. Expiration of Permit.....36
 F. Installation of Public Utility Service.36
 G. Appeals.36
 H. Enforcement.36
17. Definitions.....36

Chapter 1000: SHORELAND ZONING ORDINANCE

April 22, 2009

Shoreland Zoning Ordinance for the Municipality of Winter Harbor

1. Purposes

The purposes of this Ordinance are 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.

2. Authority.

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

3. Applicability.

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

- normal high-water line of any Birch Harbor Pond,
- upland edge of a coastal wetland, including all areas affected by tidal action, or
- upland edge of a freshwater wetland,

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

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

4. Effective Date

A. Effective Date of Ordinance and Ordinance Amendments.

This Ordinance, which was adopted by the municipal legislative body on _____, shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. A certified copy of the Ordinance, or Ordinance Amendment, attested and signed by the Municipal Clerk, shall be forwarded to the Commissioner for approval. If the Commissioner fails to act on this Ordinance or Ordinance Amendment, within forty-five (45) days of his/her receipt of the Ordinance, or Ordinance Amendment, 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, or Ordinance Amendment, if the Ordinance, or Ordinance Amendment, is approved by the Commissioner.

B. Sections 15(O) and 15(O-1).

Section 15(O) is repealed on the statutory date established under 38 M.R.S.A. section 438-B(5), at which time Section 15(O-1) shall become effective. Until such time as Section 15(O) is repealed, Section 15(O-1) is not in effect.

NOTE: The statutory date established under 38 M.R.S.A. section 438-B(5) is the effective date of state-wide timber harvesting standards. That date is "the first day of January of the 2nd year following the year in which the Commissioner of Conservation determines that at least 252 of the 336 municipalities identified by the Commissioner of Conservation as the municipalities with the highest acreage of timber harvesting activity on an annual basis for the period 1992-2003 have either accepted the state-wide standards or have adopted an ordinance identical to the state-wide standards." 38 M.R.S.A. section 438-A(5) further provides that "the Commissioner of Conservation shall notify the Secretary of State in writing and advise the Secretary of the effective date of the state-wide standards."

5. Availability.

A certified copy of this Ordinance shall be filed with the Municipal 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.

6. Severability.

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

7. 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 administered by the municipality, the more restrictive provision shall control.

This Ordinance supersedes Town of Winter Harbor Zoning Ordinance (28 October 2004) regulations relating to the shoreland areas, including but not limited to Section 12-314 "Land Use Standards, Shoreland Area" of that document. This Ordinance does not supersede chapters and sections of the Winter Harbor Zoning Ordinance (28 October 2004) which are specifically referenced within this Ordinance.

8. Amendments.

This Ordinance may be amended by majority vote of the legislative body. Copies of amendments, attested and signed by the Municipal 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. If the Commissioner fails to act on any amendment within forty-five (45) days of his/her 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.

9. Districts and Zoning Map

A. Official Zoning Map.

Town of Winter Harbor

The areas to which this Ordinance is applicable are indicated on the Winter Harbor Zoning Map as the shoreland zone within the following districts, which are defined in Chapter 12 Section 12-310(A) and Chapter 12 Section 12-310(B) of the Winter Harbor Zoning Ordinance:

1. Resource Protection District (RP)
2. Residential/Recreation District (RR)
3. Limited Residential District (LR)
4. General Development District (GD)
5. Rural District (RD)
6. Stream Protection District (SP)

10. Interpretation of District Boundaries.

District boundaries shall be interpreted following the rules set forth in the Winter Harbor Zoning Ordinance Section 12-310(F) "District Boundary Descriptions".

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.

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 upkeep and maintenance of non-conforming uses and structures including repairs or renovations that 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.** 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 is in accordance with subparagraphs (a) and (b) below.

Town of Winter Harbor

- (a) After January 1, 1989 if any portion of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure shall not be expanded, as measured in floor area or volume, by 30% or more, during the lifetime of the structure. If a replacement structure conforms with the requirements of Section 12(C)(3), and is less than the required setback from a water body, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by 30% in floor area and volume since that date.
 - (b) 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 or its designee, basing its decision on the criteria specified in Section 12(C)(2) Relocation, below. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 12(C)(1)(a) above, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.
- (2) 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 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.
- (3) Reconstruction or Replacement. Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless of the 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 its 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)(2) 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)(2) above, the physical condition and type of foundation present, if any.

- (4) 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, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

D. Non-conforming Uses

- (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)(a) 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)(4) 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 M.R.S.A. 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.

This provision shall not apply to 2 or more contiguous lots, at least one of which is non-conforming, owned by the same person or persons December 12 1991 and recorded in the registry of deeds if the lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules; and

- (a) Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
- (b) Any lots that do not meet the frontage and lot size requirements of Section 12(E)(3)(a) are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

13. Establishment of Districts.

A. 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 General Development 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 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. Coastal wetlands are rated as of January 1, 1973. Freshwater wetlands are rated 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.
- (2) Floodplains along rivers and floodplains along artificially formed great ponds along rivers, defined by the 100 year floodplain 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 floodplain soils. This district shall also include 100 year floodplains 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.

B. Limited Residential District.

The Limited Residential District includes those areas suitable for residential and recreational development. It includes areas other than those in the Resource Protection District, Stream

Protection District, or Residential/Recreational District, and areas which are used less intensively than those in the General Development District.

C. Residential/Recreational District.

The Residential/Recreational District includes areas other than those included in the Resource Protection District or Stream Protection District and which are used less intensively than those included in the Limited Residential, Rural, and the General Development Districts.

D. General Development District.

The General Development I District includes the following types of existing, intensively developed areas:

- (1) Areas of two or more contiguous acres devoted to commercial, industrial or intensive recreational activities, or a mix of such activities, including but not limited to the following:
 - (a) Areas devoted to manufacturing, fabricating or other industrial activities;
 - (b) Areas devoted to wholesaling, warehousing, retail trade and service activities, or other commercial activities; and
 - (c) Areas devoted to intensive recreational development and activities, such as, but not limited to amusement parks, race tracks and fairgrounds.
- (2) Areas otherwise discernible as having patterns of intensive commercial, industrial or recreational uses.

Portions of the General Development District may also include residential development. However, no area shall be designated as a General Development District based solely on residential use.

There shall be no newly established General Development Districts or expansions in area of existing General Development Districts adjacent to Birch Harbor Pond.

E. Rural District.

The Rural District shall include those areas other than those included within the Resource Protection District or Stream Protection District, and are discerned as suitable for low intensity residential, agriculture, timber management, and light industrial use.

F. 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 are 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.

14. Table of Land Uses.

Town of Winter Harbor

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 - Licensed Plumbing Inspector Permit Required

Abbreviations:

- RP: Resource Protection District
 - RR: Residential-Recreational District
 - LR: Limited Residential District
 - GD: General Development District
 - RD: Rural District
 - SP: Stream Protection District in accordance with this Ordinance
-
-

TABLE 1. LAND USES IN THE SHORELAND ZONE

USES	Stream Protection District	Resource Protection District	Limited Residential	General Development District	Rural District	Residential Recreational
	SP	RP	LR	GD	RD	RR
1. Non-intensive recreational uses not requiring structures, such as hunting, fishing, hiking, etc	YES	Yes	YES	YES	YES	YES
2. Motorized Vehicle traffic on existing roads and trails	YES	Yes	Yes	YES	YES	YES
3. Forest Management activities except for timber harvesting and land management roads	YES	Yes	YES	YES	YES	YES
4. Fire Prevention Activities	YES	Yes	YES	YES	YES	YES
5. Wildlife Management Practices	YES	Yes	YES	YES	YES	YES
6. Soil and Water conservation practices not requiring structures, dredging or filling	YES	Yes	YES	YES	YES	YES
7. Surveying and Resources Analysis	YES	Yes	YES	YES	YES	YES
8. Emergency operations as defined	YES	Yes	YES	YES	YES	YES
9. Mineral Exploration*	NO	Yes 3	YES 3	YES 3	YES 3	YES 3
10. Harvesting of wild crops	YES	Yes	YES	YES	YES	YES
11. Agriculture and Gardening*	YES	PB	YES	YES	YES	Yes
12. Timber Harvesting	YES	CEO	YES	YES	YES	YES
13. Clearing or removal of vegetation for activities other than timber harvesting	CEO	CEO 2	YES	YES	YES	YES
14. Public or private recreation facilities involving minimal structural development including parks, playgrounds, golf courses, driving ranges and swimming pools but excluding campgrounds	PB	PB	PB	PB	PB	PB
15. Campgrounds	NO	NO 6	NO	PB	PB	NO
16. Individual, private campsites	CEO	CEO	CEO	CEO	CEO	NO
17. Principle Structures*						
a. Single family dwellings, including driveways	NO	NO	CEO	CEO	CEO	CEO
b. Family farm	PB4	NO	PB	CEO	CEO	PB
c. Professional office: clergyman, physician, architect, engineer, attorney or a similar professional person or occupation	NO	NO	PB	CEO	CEO	NO
d. Home occupation: customary home occupations carried on and requiring only customary home equipment such as fisherman, musician, dressmaker, etc.	NO	NO	PB	YES	YES	PB
e. Motels, hotels and transient lodgings	NO	NO	PB	PB	PB	NO
f. Automobile service stations	NO	NO	NO	PB	PB	NO
g. Multi-family dwellings or apartments	NO	NO	PB	PB	CEO	NO
h. Road-side stands for agricultural products	NO	NO	PB	CEO	CEO	NO
i. Floral, nursery, shrubbery, greenhouse and similar enterprises	NO	NO	NO	CEO	CEO	NO
j. Water recreation/fishing related retail and service enterprises	NO	NO	PB	CEO	CEO	NO
k. Commercial	NO7	NO7	NO7	PB	PB	NO
l. Industrial	NO	NO	NO	PB	PB	NO

Town of Winter Harbor

USES	Stream Protection District	Resource Protection District	Limited Residential	General Development District	Rural District	Residential Recreational
	SP	RP	LR	GD	RD	RR
m. Governmental and institutional	NO	NO	PB	PB	PB	NO
18. Structures accessory to permitted uses	PB 4	PB	CEO	CEO	CEO	CEO
19. Structures accessory to allowed uses	PB 4	PB	CEO	CEO	YES	YES
20. Road construction	PB	NO 8	PB	PB	YES	PB
21. Land management roads	YES	PB	YES	YES	YES	YES
22. Parking facilities	NO	NO 6	PB	PB	YES	PB
23. Small non-residential, non-profit facilities for educational, scientific or nature interpretation purposes	PB 4	PB	PB	CEO	CEO	PB
24. Municipal structures or uses	NO	NO	PB	PB	PB	PB
25. Mobile homes	NO	NO	CEO	CEO	CEO	NO
26. Cluster Development*	NO	NO	NO	PB	PB	NO
27. Commercial and industrial facilities having less than two thousand five hundred (2,500) square feet of gross floor area employing less than six (6) full-time employees or the equivalent thereof.	NO	NO	NO	PB	PB	NO
28. Commercial and industrial facilities having more than two thousand five hundred (2500) square feet of gross floor area and/or employing more than six (6) full-time employees or the equivalent thereof.	NO	NO	NO	PB	PB	NO
29. Commercial and industrial facilities which by their nature of operation require shore front location, such as boatyards, marinas, fishing facilities, and other marine resource related activities.	PB	NO	PB	CEO	PB	NO
30. Automobile graveyards and junkyards operated in accordance with state law	NO	NO	NO	PB	PB	NO
31. Piers, docks, wharfs, bridges, breakwaters, causeways, and other structures and uses extending over or below the normal high-water line or within a wetland						
a. Temporary	CEO9	CEO9	CEO9	CEO9	CEO9	NO
b. Permanent	PB	PB	PB	PB	PB	NO
32. Marinas	PB	NO	PB	PB	PB	NO
33. Public and Private Schools	NO	NO	PB	PB	PB	NO
34. Church or other places of worship, parish house, rectory, convent, and other religious institutions	NO	NO	PB	PB	PB	PB
35. Hospitals, Clinics	NO	NO	PB	PB	PB	NO
36. Eleemosynary, Charitable and fraternal organizations, structures or uses	NO	NO	PB	PB	PB	NO
37. Cemeteries	NO	NO	PB	PB	PB	NO
38. Clearing for approved construction	CEO	CEO2	YES	YES	YES	YES
39. Filling or other earth-moving activity of less than ten (10) Yards	CEO	CEO	YES	YES	YES	YES
40 Filling or other earth-moving activity of more than ten (10) yards	PB	PB	CEO1	CEO1	CEO1	CEO1
41. Aquaculture	PB	PB	PB	YES	PB	PB
42. Mineral Extraction, including sand and gravel extraction	NO	NO	PB	PB	PB	PB

Chapter 1000: Shoreland Zoning Ordinance

April 22, 2009

Town of Winter Harbor

USES	Stream Protection District	Resource Protection District	Limited Residential	General Development District	Rural District	Residential Recreational
	SP	RP	LR	GD	RD	RR
43. Conversion of Season Residences to year-round residence	LPI	NO	LPI	LPI	LPI	LPI
44. Private sewage disposal systems for allowed uses	LPI	NO	LPI	LPI	LPI	LPI
45. Essential services						
A. Roadside distribution lines (34.5kV and lower)	CEO 5	CEO 5	YES 10	YES 10	PB	PB
B. Non-roadside or cross-country distribution lines involving ten poles or less in the shoreland zone	PB 5	PB 5	CEO	CEO	PB	PB
C. Non-roadside or cross-country distribution lines involving eleven or more poles in the shoreland zone	PB 5	PB 5	PB	PB	PB	PB
D. Other essential services	PB 5	PB 5	PB	PB	PB	PB
46. Service drops, as defined, to allowed uses	YES	YES	YES	YES	YES	YES
47. Signs	YES	YES	YES	YES	YES	YES
48. Uses similar to allowed uses	CEO	CEO	CEO	CEO	CEO	CEO
49. Uses similar to uses requiring a PB permit	PB	PB	PB	PB	PB	PB
50. Uses similar to uses requiring a CEO Permit	CEO	CEO	CEO	CEO	CEO	CEO

1. Permit needed in the shoreland zone only.
2. In RP not allowed within 75 feet horizontal distance of the normal high-water line of Birch Harbor Pond, except to remove safety hazards.
3. Requires permit from the Code Enforcement officer if more than 100 square feet of surface area, in total, is disturbed
4. Provided that a variance from the setback requirement is obtained from the Board of Appeals.
5. See further restrictions in Section 15(L)(2).
- 6 Except when area is zoned for resource protection due to floodplain criteria in which case a permit is required from the PB.
- 7Except for commercial uses otherwise listed in this Table, such as marinas and campgrounds, that are allowed in the respective district.
- 8Except as provided in Section 15(H)(3).
- 9 Excluding bridges and other crossings not involving earthwork, in which case no permit is required.
- 10Permit not required, but must file a written "notice of intent to construct" with CEO.

NOTE: A person performing any of the following activities shall require a permit from the Department of Environmental Protection, pursuant to 38 M.R.S.A. section 430-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:

- A. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;
- B. Draining or otherwise dewatering;
- C. Filling, including adding sand or other material to a sand dune; or
- D. Any construction or alteration of any permanent structure.

15. Land Use Standards.

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

A. Minimum Lot Standards

Town of Winter Harbor

- (1) All lot dimensional standards listed in the following table are per principle structure or per recreational facility.

District	Minimum Lot Area (sq. ft.)	Minimum Shore Frontage (ft.)
Resource Protection (RP), Residential Recreational (RR), Limited Residential (LR), Rural District (RD), Stream Protection (SP)	44,000	200
General Development (GD) – adjacent to Tidal Areas	44,000	200
General Development (GD) – adjacent to non-Tidal Areas	60,000	300
General Development (GD) – adjacent to non-Tidal Areas, served by public sewer	10,000	200

- (2) 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.
- (3) 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, 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 Birch Harbor 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, except that in the General Development District the setback from the normal high-water line shall be at least twenty five (25) feet, horizontal distance. 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 shoreland zone except in the General Development district 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 one foot 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 flood-plain soils.
- (4) The total footprint area of all structures, parking lots and other non-vegetated surfaces, within the shoreland zone shall not exceed twenty (20) percent of the lot or a portion thereof, located within the shoreland zone, including land area previously developed, except in the General Development District adjacent to tidal waters, where lot coverage shall not exceed seventy (70) percent.
- (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;
 - (a) 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;
 - (b) The total height of the wall(s), in the aggregate, are 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 revegetated 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 stormwater 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;
- (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 M.R.S.A. section 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.

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

- (1) Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
- (2) The location shall not interfere with existing developed or natural beach areas.
- (3) The facility shall be located so as to minimize adverse effects on fisheries.
- (4) The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the 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.
- (5) 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.

- (6) 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.
- (7) 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.
- (8) Except in the General Development 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.

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 Birch Harbor 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) 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 Birch Harbor 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.
- (3) 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 except a canopy shall be attached to the recreational vehicle.
- (4) 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 (1000) square feet.

- (5) 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.
- (6) 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 Birch Harbor Pond, and streams which flow to Birch Harbor Pond:

- (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

See: Birch Harbor Pond Protection Ordinance, Reference G, Adopted 17 June 2003

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. The setback requirement for parking areas serving public boat launching facilities in Districts other than the General Development District shall be no less than fifty (50) feet, horizontal distance, from the 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 Birch Harbor 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 or 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 their 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 for erosion and sedimentation control contained in Section 15(Q).

- (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 or 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:

Grade (Percent)	Spacing (Feet)
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 all Districts:

- (1) Signs relating to goods and services sold on the premises shall be allowed, provided that such signs shall not exceed two (2) signs per premises. Billboards and signs related to

Town of Winter Harbor

goods and services not rendered on the premises shall be prohibited, except as allowed under the Town of Winter Harbor Directional Sign Ordinance.

- (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, external non-flashing lights. No internally lighted, flashing, or neon signs will be permitted.
- (8) In the General Development Zone, signs will not exceed two (2) square feet per one (1) foot of road frontage to a maximum of one hundred (100) square feet in area.
- (9) Nonconforming signs, already in use, shall be permitted to remain for the natural and useful life of the sign, as long as the sign remains in the same location. Replacement signs shall conform to this ordinance.

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 stormwaters.
- (2) Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.

K. Septic Waste Disposal

- (1) All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules, 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.

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 transmission and distribution lines, towers and related equipment 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 Birch Harbor 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 hundred (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.
 - (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.
- (4) 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

Town of Winter Harbor

- (1) All spreading of manure shall be accomplished in conformance with the *Manure Utilization Guidelines* published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. sections 4201-4209).
- (2) Manure shall not be stored or stockpiled within one hundred (100) feet, horizontal distance, of Birch Harbor 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.
- (4) There shall be no new tilling of soil within one-hundred (100) feet, horizontal distance, of the normal high-water line of Birch Harbor 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 Birch Harbor 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.

O. Timber Harvesting

- (1) In a Resource Protection District abutting Birch Harbor Pond, timber harvesting shall be limited to the following:
 - (a) Within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, timber harvesting may be conducted when the following conditions are met:
 - (1) The ground is frozen;
 - (2) There is no resultant soil disturbance;
 - (3) The removal of trees is accomplished using a cable or boom and there is no entry of tracked or wheeled vehicles into the 75-foot strip of land;
 - (4) There is no cutting of trees less than 6 inches in diameter; no more than 30% of the trees 6 inches or more in diameter, measured at 4 ½ feet above ground level, are cut in any 10-year period; and a well-distributed stand of trees and other natural vegetation remains; and
 - (5) A licensed professional forester has marked the trees to be harvested prior to a permit being issued by the municipality.

Town of Winter Harbor

- (b) Beyond the 75 foot strip referred to in Section 15(O)(1)(a) above, timber harvesting is permitted in accordance with paragraph 2 below except that in no case shall the average residual basal area of trees over 4 ½ inches in diameter at 4 1/2 feet above ground level be reduced to less than 30 square feet per acre.
- (2) Except in areas as described in Section 15(O)(1) above, timber harvesting shall conform with the following provisions:
- (a) Selective cutting of no more than forty (40) percent of the total volume of trees four (4) inches or more in diameter measured at 4 1/2 feet above ground level on any lot in any ten (10) year period is permitted. In addition:
 - (i) Within one-hundred (100) feet, horizontal distance, of the normal high-water line of Birch Harbor Pond, and within seventy-five (75) feet, horizontal distance, of the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland, there shall be no clearcut openings and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.
 - (ii) At distances greater than one-hundred (100) feet, horizontal distance, of Birch Harbor Pond, and greater than seventy-five (75) feet, horizontal distance, of the normal high-water line of other water bodies or the upland edge of a wetland, harvesting operations shall not create single clearcut openings greater than ten-thousand (10,000) square feet in the forest canopy. Where such openings exceed five-thousand (5000) square feet they shall be at least one hundred (100) feet, horizontal distance, apart. Such clearcut openings shall be included in the calculation of total volume removal. Volume may be considered to be equivalent to basal area.
 - (b) Timber harvesting operations exceeding the 40% limitation in Section 15(O)(2)(a) above, may be allowed by the planning board upon a clear showing, including a forest management plan signed by a Maine licensed professional forester, that such an exception is necessary for good forest management and will be carried out in accordance with the purposes of this Ordinance. The planning board shall notify the Commissioner of the Department of Environmental Protection of each exception allowed, within fourteen (14) days of the planning board's decision.
 - (c) No accumulation of slash shall be left within fifty (50) feet, horizontal distance, of the normal high-water line of a water body. In all other areas slash shall either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than four (4) feet above the ground. Any debris that falls below the normal high-water line of a water body or tributary stream shall be removed.
 - (d) Timber harvesting equipment shall not use stream channels as travel routes except when:
 - (i) Surface waters are frozen; and
 - (ii) The activity will not result in any ground disturbance.
 - (e) All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.

- (f) Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil revegetated.
- (g) Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least seventy-five (75) feet, horizontal distance, in width for slopes up to ten (10) percent shall be retained between the exposed mineral soil and the normal high-water line of a water body or upland edge of a wetland. For each ten (10) percent increase in slope, the unscarified strip shall be increased by twenty (20) feet, horizontal distance. The provisions of this paragraph apply only to a face sloping toward the water body or wetland, provided, however, that no portion of such exposed mineral soil on a back face shall be closer than twenty five (25) feet, horizontal distance, from the normal high-water line of a water body or upland edge of a wetland.

O-1. Timber Harvesting – Statewide Standards
[Effective on effective date established in Section 4(B)]

- (1) Shoreline integrity and sedimentation. Persons conducting timber harvesting and related activities must take reasonable measures to avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of water body and tributary stream banks, water body and tributary stream channels, shorelines, and soil lying within water bodies, tributary streams and wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of water body and tributary stream banks, water body and tributary stream channels, shorelines, and soil lying within water bodies, tributary streams and wetlands occurs, such conditions must be corrected.
- (2) Slash treatment. Timber harvesting and related activities shall be conducted such that slash or debris is not left below the normal high-water line of any water body or tributary stream, or the upland edge of a wetland. Section 15(O-1)(2) does not apply to minor, incidental amounts of slash that result from timber harvesting and related activities otherwise conducted in compliance with this section.
 - (a) Slash actively used to protect soil from disturbance by equipment or to stabilize exposed soil, may be left in place, provided that no part thereof extends more than 4 feet above the ground.
 - (b) Adjacent to Birch Harbor Pond, rivers and wetlands:
 - (i) No accumulation of slash shall be left within 50 feet, horizontal distance, of the normal high-water line or upland edge of a wetland; and
 - (ii) Between 50 feet and 250 feet, horizontal distance, of the normal high-water line or upland edge of a wetland, all slash larger than 3 inches in diameter must be disposed of in such a manner that no part thereof extends more than 4 feet above the ground.
- (3) Timber harvesting and related activities must leave adequate tree cover and shall be conducted so that a well-distributed stand of trees is retained. This requirement may be satisfied by following one of the following three options:
 - (a) Option 1 (40% volume removal), as follows:

Town of Winter Harbor

- (i) Harvesting of no more than 40 percent of the total volume on each acre of trees 4.5 inches DBH or greater in any 10 year period is allowed. Volume may be considered to be equivalent to basal area;
 - (ii) A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained; and,
 - (iii) Within 75 feet, horizontal distance, of the normal high-water line of rivers, streams, and Birch Harbor Pond, and within 75 feet, horizontal distance, of the upland edge of a freshwater or coastal wetlands, there must be no cleared openings. At distances greater than 75 feet, horizontal distance, of the normal high-water line of a river or Birch Harbor Pond or upland edge of a wetland, timber harvesting and related activities must not create single cleared openings greater than 14,000 square feet in the forest canopy. Where such openings exceed 10,000 square feet, they must be at least 100 feet, horizontal distance, apart. Such cleared openings will be included in the calculation of total volume removal. Volume may be considered equivalent to basal area.
- (b) Option 2 (60 square foot basal area retention), as follows:
- (i) The residual stand must contain an average basal area of at least 60 square feet per acre of woody vegetation greater than or equal to 1.0 inch DBH, of which 40 square feet per acre must be greater than or equal to 4.5 inches DBH;
 - (ii) A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained; and,
 - (iii) Within 75 feet, horizontal distance, of the normal high-water line of water bodies and within 75 feet, horizontal distance, of the upland edge of wetlands, there must be no cleared openings. At distances greater than 75 feet, horizontal distance, of the normal high-water line of a river or Birch Harbor Pond, or upland edge of a wetland, timber harvesting and related activities must not create single cleared openings greater than 14,000 square feet in the forest canopy. Where such openings exceed 10,000 square feet, they must be at least 100 feet, horizontal distance, apart. Such cleared openings will be included in the calculation of the average basal area. Volume may be considered equivalent to basal area.
- (c) Option 3 (Outcome based), which requires: An alternative method proposed in an application, signed by a Licensed Forester or certified wildlife professional, submitted by the landowner or designated agent to the State of Maine Department of Conservation's Bureau of Forestry (Bureau) for review and approval, which provides equal or better protection of the shoreland area than this rule.

Landowners must designate on the Forest Operations Notification form required by 12 M.R.S.A. chapter 805, subchapter 5 which option they choose to use. If landowners choose Option 1 or Option 2, compliance will be determined solely on the criteria for the option chosen. If landowners choose Option 3, timber harvesting and related activities may not begin until the Bureau has approved the alternative method.

Town of Winter Harbor

The Bureau may verify that adequate tree cover and a well-distributed stand of trees is retained through a field procedure that uses sample plots that are located randomly or systematically to provide a fair representation of the harvest area.

- (4) Skid trails, yards, and equipment operation. This requirement applies to the construction, maintenance, and use of skid trails and yards in shoreland areas.
- (a) Equipment used in timber harvesting and related activities shall not use river, stream or tributary stream channels as travel routes except when surface waters are frozen and snow covered, and the activity will not result in any ground disturbance.
 - (b) Skid trails and yards must be designed and constructed to prevent sediment and concentrated water runoff from entering a water body, tributary stream, or wetland. Upon termination of their use, skid trails and yards must be stabilized.
 - (c) Setbacks:
 - (i) Equipment must be operated to avoid the exposure of mineral soil within 25 feet, horizontal distance, of any water body, tributary stream, or wetland. On slopes of 10 percent or greater, the setback for equipment operation must be increased by 20 feet, horizontal distance, plus an additional 10 feet, horizontal distance, for each 5 percent increase in slope above 10 percent. Where slopes fall away from the resource, no increase in the 25-foot setback is required.
 - (ii) Where such setbacks are impracticable, appropriate techniques shall be used to avoid sedimentation of the water body, tributary stream or wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
- (5) Land Management Roads. Land management roads, including approaches to crossings of water bodies, tributary stream channels, and freshwater wetlands, ditches and other related structures, must be designed, constructed, and maintained to prevent sediment and concentrated water runoff from directly entering the water body, tributary stream or wetland. Surface water on or adjacent to water crossing approaches must be diverted through vegetative filter strips to avoid sedimentation of the watercourse or wetland. Because roadside ditches may not extend to the resource being crossed, vegetative filter strips must be established in accordance with the setback requirements in Section 15(O-1)(7) of this rule.
- (a) Land management roads and associated ditches, excavation, and fill must be set back at least:
 - (i) 100 feet, horizontal distance, from the normal high-water line of Birch Harbor Pond, river or freshwater or coastal wetland;
 - (ii) 50 feet, horizontal distance, from the normal high-water line of streams; and
 - (iii) 25 feet, horizontal distance, from the normal high-water line of tributary streams

- (b) The minimum 100 foot setback specified in Section 15(O-1)(5)(a)(i) above may be reduced to no less than 50 feet, horizontal distance, and the 50 foot setback specified in Section 15(O-1)(5)(a)(ii) above may be reduced to no less than 25 feet, horizontal distance, if, prior to construction, the landowner or the landowner's designated agent demonstrates to the Planning Board's satisfaction that no reasonable alternative exists and 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 to avoid sedimentation of the water body, tributary stream or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
- (c) On slopes of 10 percent or greater, the land management road setback must be increased by at least 20 feet, horizontal distance, plus an additional 10 feet, horizontal distance, for each 5 percent increase in slope above 10 percent.
- (d) New land management roads are not allowed within the shoreland area along Significant River Segments as identified in 38 M.R.S.A. section 437, nor in a Resource Protection District, unless, prior to construction, the landowner or the landowner's designated agent makes a clear demonstration to the Planning Board's satisfaction that no reasonable alternative route exists outside the shoreland zone, and that the new road must be set back as far as practicable from the normal high-water line and screened from the river by existing vegetation.
- (e) Ditches, culverts, bridges, dips, water turnouts and other water control installations associated with roads must be maintained on a regular basis to assure effective functioning. Drainage structures shall deliver a dispersed flow of water into an unscarified filter strip no less than the width indicated in the setback requirements in Section 15(O-1)(7). Where such a filter strip is impracticable, appropriate techniques shall be used to avoid sedimentation of the water body, tributary stream, or wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
- (f) Road closeout and discontinuance. Maintenance of the water control installations required in Section 15(O-1)(5)(e) must continue until use of the road is discontinued and the road is put to bed by effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to avoid surface water flowing over or under the water bar, and extending a sufficient distance beyond the traveled way so that water does not reenter the road surface.
- (g) Upgrading existing roads. Extension or enlargement of presently existing roads must conform to the provisions of Section 15(O-1). Any nonconforming existing road may continue to exist and to be maintained, as long as the nonconforming conditions are not made more nonconforming.
- (h) Exception. Extension or enlargement of presently existing roads need not conform to the setback requirements of Section 15(O-1)(5)(a) if, prior to extension or enlargement, the landowner or the landowner's designated agent demonstrates to the Planning Board's satisfaction that no reasonable alternative exists and 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 to avoid sedimentation of the water body,

Town of Winter Harbor

tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

- (i) Additional measures. In addition to the foregoing minimum requirements, persons undertaking construction and maintenance of roads and river, stream and tributary stream crossings must take reasonable measures to avoid sedimentation of surface waters.
- (6) Crossings of waterbodies. Crossings of rivers, streams, and tributary streams must allow for fish passage at all times of the year, must not impound water, and must allow for the maintenance of normal flows.
- (a) Determination of flow. Provided they are properly applied and used for the circumstances for which they are designed, methods including but not limited to the following are acceptable as a means of calculating the 10 year and 25 year frequency water flows and thereby determining water crossing sizes as required in Section 15(O-1): The United States Geological Survey (USGS) Methods; specifically: Hodgkins, G. 1999. Estimating the Magnitude of Peak Flows for Streams in Maine for Selected Recurrence Intervals. U.S. Geological Survey. Water Resources Investigations Report 99-4008. 45 pp.
 - (b) Upgrading existing water crossings. Extension or enlargement of presently existing water crossings must conform to the provisions of Section 15(O-1). Any nonconforming existing water crossing may continue to exist and be maintained, as long as the nonconforming conditions are not made more nonconforming; however, any maintenance or repair work done below the normal high-water line must conform to the provisions of Section 15(O-1).
 - (c) Other Agency Permits. Any timber harvesting and related activities involving the design, construction, and maintenance of crossings on waterbodies other than a river, stream or tributary stream may require a permit from the Land Use Regulation Commission, the Department of Environmental Protection, or the US Army Corps of Engineers.
 - (d) Any timber harvesting and related activities involving the design, construction, and maintenance of crossings of freshwater wetlands identified by the Department of Inland Fisheries and Wildlife as essential wildlife habitat require prior consultation with the Department of Inland Fisheries and Wildlife.
 - (e) Notice to Bureau of Forestry. Written notice of all water crossing construction maintenance, alteration and replacement activities in shoreland areas must be given to the Bureau prior to the commencement of such activities. Such notice must contain all information required by the Bureau, including:
 - (i) a map showing the location of all proposed permanent crossings;
 - (ii) the GPS location of all proposed permanent crossings;
 - (iii) for any temporary or permanent crossing that requires a permit from state or federal agencies, a copy of the approved permit or permits; and
 - (iv) a statement signed by the responsible party that all temporary and permanent crossings will be constructed, maintained, and closed out in accordance with the requirements of this Section.
 - (f) Water crossing standards. All crossings of rivers require a bridge or culvert sized according to the requirements of Section 15(O-1)(6)(g) below. Streams and tributary streams may be crossed using temporary structures that are not bridges or culverts provided:

- (i) concentrated water runoff does not enter the stream or tributary stream;
- (ii) sedimentation of surface waters is reasonably avoided;
- (iii) there is no substantial disturbance of the bank, or stream or tributary stream channel;
- (iv) fish passage is not impeded; and,
- (v) water flow is not unreasonably impeded.

Subject to Section 15(O-1)(6)(f)(i-v) above, skid trail crossings of streams and tributary streams when channels of such streams and tributary streams are frozen and snow-covered or are composed of a hard surface which will not be eroded or otherwise damaged are not required to use permanent or temporary structures.

- (g) Bridge and Culvert Sizing. For crossings of river, stream and tributary stream channels with a bridge or culvert, the following requirements apply:

- (i) Bridges and culverts must be installed and maintained to provide an opening sufficient in size and structure to accommodate 10 year frequency water flows or with a cross-sectional area at least equal to 2 1/2 times the cross-sectional area of the river, stream, or tributary stream channel.

- (ii) Temporary bridge and culvert sizes may be smaller than provided in Section 15(O-1)(6)(g) (i) if techniques are effectively employed such that in the event of culvert or bridge failure, the natural course of water flow is maintained and sedimentation of the water body or tributary stream is avoided. Such crossing structures must be at least as wide as the channel and placed above the normal high-water line. Techniques may include, but are not limited to, the effective use of any, a combination of, or all of the following:

1. use of temporary skidder bridges;
2. removing culverts prior to the onset of frozen ground conditions;
3. using water bars in conjunction with culverts;
4. using road dips in conjunction with culverts.

- (iii) Culverts utilized in river, stream and tributary stream crossings must:

1. be installed at or below river, stream or tributary stream bed elevation;
2. be seated on firm ground;
3. have soil compacted at least halfway up the side of the culvert;
4. be covered by soil to a minimum depth of 1 foot or according to the culvert manufacturer's specifications, whichever is greater; and
5. have a headwall at the inlet end which is adequately stabilized by riprap or other suitable means to reasonably avoid erosion of material around the culvert.

- (iv) River, stream and tributary stream crossings allowed under Section 15(O-1), but located in flood hazard areas (i.e. A zones) as identified on a community's Flood Insurance Rate Maps (FIRM) or Flood Hazard Boundary Maps (FHBM), must be designed and constructed under the stricter standards contained in that community's National Flood Insurance Program (NFIP). For example, a water crossing may be required to pass a 100-year flood event.

- (v) Exception. Skid trail crossings of tributary streams within shoreland areas and wetlands adjacent to such streams may be undertaken in a manner not in conformity with the requirements of the foregoing subsections provided persons conducting such activities take reasonable measures to avoid the disruption of shoreline integrity, the

Town of Winter Harbor

occurrence of sedimentation of water, and the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands occurs, such conditions must be corrected.

(h) Skid trail closeout. Upon completion of timber harvesting and related activities, or upon the expiration of a Forest Operations Notification, whichever is earlier, the following requirements apply:

- (i) Bridges and culverts installed for river, stream and tributary stream crossings by skid trails must either be removed and areas of exposed soil stabilized, or upgraded to comply with the closeout standards for land management roads in Section 15(O-1)(6)(i) below.
- (ii) Water crossing structures that are not bridges or culverts must either be removed immediately following timber harvesting and related activities, or, if frozen into the river, stream or tributary stream bed or bank, as soon as practical after snowmelt.
- (iii) River, stream and tributary stream channels, banks and approaches to crossings of water bodies and tributary streams must be immediately stabilized on completion of harvest, or if the ground is frozen and/or snow-covered, as soon as practical after snowmelt. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

(i) Land management road closeout. Maintenance of the water control features must continue until use of the road is discontinued and the road is put to bed by taking the following actions:

- (i) Effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to reasonably avoid surface water flowing over or under the water bar, and extending sufficient distance beyond the traveled way so that water does not reenter the road surface.
- (ii) Water crossing structures must be appropriately sized or dismantled and removed in a manner that reasonably avoids sedimentation of the water body or tributary stream.
- (iii) Any bridge or water crossing culvert in roads to be discontinued shall satisfy one of the following requirements:
 - 1. it shall be designed to provide an opening sufficient in size and structure to accommodate 25 year frequency water flows;
 - 2. it shall be designed to provide an opening with a cross-sectional area at least 3 1/2 times the cross-sectional area of the river, stream or tributary stream channel; or
 - 3. it shall be dismantled and removed in a fashion to reasonably avoid sedimentation of the river, stream or tributary stream.

If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

(7) Slope Table

Filter strips, skid trail setbacks, and land management road setbacks must be maintained as specified in Section 15(O-1), but in no case shall be less than shown in the following table.

Average slope of land between exposed mineral soil and the shoreline (percent) (feet along surface of the ground)	Width of strip between exposed mineral soil and shoreline
0	25
10	45
20	65
30	85
40	105
50	125
60	145
70	165

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

- (1) In a Resource Protection District abutting Birch Harbor 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 safety hazards.

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, and except to allow for the development of permitted uses, within a strip of land extending one-hundred (100) feet, horizontal distance, inland from the normal high-water line of Birch Harbor Pond, and 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 or shrub crown. However, a footpath not to exceed six (6) feet in width as measured between tree trunks and/or shrub stems is allowed provided that a cleared line of sight to the 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 Birch Harbor Pond, shall be defined as maintaining a rating score of 24 or more in each 25-foot by 50-foot rectangular (1250 square feet) area as determined by the following rating system.

Diameter of Tree at 4-1/2 feet Above Ground Level (inches)	Points
2 to less than 4 in.	1
4 to less than 8 in.	2
8 to less than 12 in.	4
12 in. or greater	8

Adjacent to other water bodies, tributary streams, and wetlands, a "well-distributed stand of trees" is defined as maintaining a minimum rating score of 16 per 25-foot by 50-foot rectangular area.

The following shall govern in applying this point system:

- (i) The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;
- (ii) Each successive plot must be adjacent to, but not overlap a previous plot;
- (iii) Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this Ordinance;
- (iv) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by is Ordinance;
- (v) Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

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 five (5) saplings less than two (2) inches in diameter at four and one half (4 ½) feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 5 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 (2)(a) 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, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.

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 Birch Harbor 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 shall not apply to the General Development District.

- (4) Legally existing nonconforming 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. 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 rip-rap.
- (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. Drainageways 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.

- (6) On slopes greater than %25, there shall be no grading or filling within 100 feet of the normal high-water line, except to protect the shoreline and prevent erosion.

R. 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.

S. 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.

T. Archaeological Site.

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.

U. Beach Construction.

Beach construction on Birch Harbor Pond or any stream, brook, or coastal wetland shall require a permit from the Department of Environmental Protection.

16. Administration

This section addresses administration of this ordinance within the shoreland zone. This section does not address administration of any ordinance outside the shoreland zone.

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. The Board of Appeals of the Town of Winter Harbor shall consist of (5) members appointed by the municipal officers pursuant to the provisions of 30-A M.R.S.A. Section 2691 and 4353 as amended.

- (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 watercourse.
- (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 Section 14.
- (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.

D. Procedure for Administering Permits.

Within 35 days of the date of receiving a written application, the Planning Board or Code Enforcement Officer, as indicated in Section 14, shall notify the applicant in writing either that

Town of Winter Harbor

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, refer for Conditional Use Permit (see Section 16(J)), 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 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 avoid problems associated with floodplain development and use; and
- (8) 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.

There are no special exceptions for single family residential structures in the Resource Protection District of the Town of Winter Harbor.

F. Expiration of Permit.

Permits shall expire nine (9) months from the date of issuance if a substantial start is not made in construction or in the use of the property during that period. If a substantial start is made within nine (9) months, the applicant will have two (2) years from the date of issuance of said permit to substantially complete the project.

G. Installation of Public Utility Service.

Town of Winter Harbor

A public utility, water district, sanitary district or any utility company of any kind may not 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 or other written arrangements have been made between the municipal officials and the utility.

H. Appeals

(1) Powers and Duties of the Board of Appeals. The Board of Appeals shall have the following powers:

(a) 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 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 order, requirement, decision or determination made, or failure to act, in the enforcement of this ordinance is not appealable to the Board of Appeals.

(b) Variance Appeals: To authorize variances upon appeal, within the limitations set forth in this Ordinance.

(2) Variance Appeals. 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 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.
- (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 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 a 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.
- (5) Appeal to Superior Court. Except as provided by 30-A M.R.S.A. 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 forty-five (45) days from the date of any decision of the Board of Appeals.
- (6) Reconsideration. In accordance with 30-A M.R.S.A. 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 insure 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. On a biennial basis, a summary of this record shall be submitted to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection.
- (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. section 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 M.R.S.A. section 4452).

J. Conditional Use Permits

Conditional Use Permits, including application procedures and considerations for granting such permits, are described in Section 12-316(H) through Section 12-316(K) of the Town of Winter Harbor Zoning Ordinance.

A. Administering Bodies and Agents.

This Ordinance shall be administered by the Winter Harbor Code Enforcement Officer, Board of Appeals, and Planning Board; all of which are created, appointed, or reappointed according to the Winter Harbor Zoning Ordinance Sections 12-316(A), (B), and (C).

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 watercourse.
- (3) 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

- (2) 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 Section 14.
- (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.

D. Procedure for Administering Permits

Within 35 days of the date of receiving a written application, the Planning Board or Code Enforcement Officer, as indicated in Section 14, 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 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 avoid problems associated with floodplain development and use; and
- (8) 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. Expiration of Permit.

Permits shall expire one year from the date of issuance if a 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.

F. Installation of Public Utility Service.

Town of Winter Harbor

A public utility, water district, sanitary district or any utility company of any kind may not 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 or other written arrangements have been made between the municipal officials and the utility.

G. Appeals.

Appeals of this ordinance shall be handled following the rules in the Winter Harbor Zoning Ordinance Chapter 12 Section 12-316(C).

H. Enforcement.

This Ordinance shall be enforced following the rules in the Winter Harbor Zoning Ordinance Chapter 12 Section 12-316(G).

17. Definitions.

Accessory Use or Structure - A use or structure which is incidental and subordinate to the principal use or structure. 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 and/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 and green house products. Agriculture does not include forest management and timber harvesting activities.

Alteration - Any change, addition or modification in construction, or any change in the structural members of a building, such as bearing walls, columns, beams or girders.

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

Aquifer - A permeable geologic formation, either rock or sediment, that when saturated with groundwater is capable of transporting water through the formation.

Automobile Graveyards and Junkyards - A yard, field or other area used as a place of storage for three (3) or more unserviceable, discarded, worn-out or junked motor vehicles. A yard, field, or other area used as a place of storage for: discarded, worn-out or junked plumbing, heating supplies, household appliances and furniture; discarded scrap junked lumber; old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber or plastic debris, waste and all scrap iron, steel and other scrap ferrous or nonferrous material; and garbage dumps, waste dumps and sanitary fills.

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.

Best Management Practice - Procedures designed to minimize the impact of certain activities or land uses on groundwater quality and quantity.

Billboard - A sign, structure or surface which is available for advertising purposes for goods or services rendered off the premises.

Board - Refers to the Town of Winter Harbor Planning Board.

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.

Boathouse - A non-residential structure designed for non-commercial purposes.

Building - A structure for the support, shelter or enclosure of persons, animals, goods or property of any kind.

Building Height - See "Height of Structure"

Bureau - State of Maine Department of Conservation's Bureau of 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; or any premises established for overnight use for the purpose of temporary camping, and for which a fee is charged.

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

Chemical Bulk Storage - Storage of a chemical or chemicals in a container or containers larger than those intended for normal homeowner or retailer purposes. Proper, non-commercial, homeowner use of chemicals is not included.

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.

Code Enforcement Officer - A person appointed by the Municipal Officers to administer and enforce this Ordinance.

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.

Conditional Use - A use permitted only after review and approval by the Planning Board. A Conditional Use is a use that would not be appropriate without restriction but which, if controlled under the provisions of this Ordinance, would promote the purposes of this Ordinance. Such uses may be permitted if specific provision for such Conditional Use is made in this Ordinance.

Conforming Use - A use of buildings, structures or land which complies with all applicable provisions of this Ordinance.

Constructed - Includes built, erected, altered, reconstructed, moved upon, or any physical operations of the premises which are required for construction. Excavation, fill, drainage, and the like, shall be considered a part of construction.

Construction and Commercial Equipment & Vehicle Storage - Storage of construction equipment or other commercial vehicles in excess of thirty (30) consecutive days in which the equipment is not used.

Construction/Demolition - Construction or demolition of facilities, buildings, etc. associated with the land uses or activities.

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.
- 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.
- 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.
- District - A specified portion of the municipality, delineated on the Official Zoning Map, within which certain regulations and requirements or various combinations thereof apply under the provisions of this Ordinance.
- 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.
- Drinking Water Standards, Primary and Secondary - Standards for drinking water as stated in the State of Maine Rules Relating to Drinking Water, Maine Department of Human Services.
- 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.
- Dwelling Unit - (see Residential Dwelling Unit)
- Dump - (see landfill)
- 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.
- Excavation - (see construction)
- Expansion of a structure - an increase in the floor area or volume of a structure, including all extensions such as, but not limited to attaches: decks, garages, porches and greenhouses.
- Expansion of use - the addition of one or more months to a use's operating season; or the use of more floor area or ground area devoted to a particular use.
- Family - one or more persons occupying premises and living as a single housekeeping unit.
- Fill - (see construction)
- Floodway - the channel of a 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, plus the horizontal area of any unenclosed portions of a structure such as porches and decks.
- Floor Drain - An opening in the floor that leads to the ground and/or is not permitted under other State, Federal, or local regulations. Work sinks which lead to such drains are included.

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.

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

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.

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 and 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.

Fuel Oil Distributor, Fuel Oil Storage - The storage of fuel for distribution or sale. Storage of fuel oil not for domestic use, i.e., not in tanks directly connected to burners.

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 or inland waters and that can not be located away from these waters. The uses include, but are not limited to commercial and recreational fishing and boating facilities, excluding recreational boat storage buildings, finfish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, retaining walls, industrial uses dependent upon waterborne transportation or requiring large volumes of cooling or processing water that can not reasonably be located or operated at an inland site, and uses that primarily provide general public access to coastal or inland waters.

Gas Station, Service Station - Any place of business at which gasoline, other motor fuels or motor oil are sold to the public for use in a motor vehicle, regardless of any other business on the premises.

Grade - In relation to buildings, the average of the finished ground level at the center of each wall of a building.

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

Ground water - the water contained within the interconnected pores, cracks or fractures located below the water table of a confined or unconfined aquifer.

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.

Hazardous Material - Any gaseous, liquid or solid materials, or substances designated as hazardous by the Environmental Protection Agency and/or the Maine Department of Environmental Protection.

Hazardous Waste - Any substance identified under chapter 850, Identification of Hazardous Wastes, of the rules of the State of Maine, Department of Environmental Protection, effective

date July 1, 1980, including revisions or amendments thereto, and any radioactive waste material which means any solid, liquid, or gas residue, including but not limited to spent fuel assemblies prior to processing, remaining after the primary usefulness of the radioactive material has been exhausted and containing nuclides that spontaneously disintegrate or exhibit ionizing radiations.

Height of a structure - the vertical distance between the mean original grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances which 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.

Horticulture - (see agriculture)

House Trailers - A vehicle similar to a mobile home, but which does not have a toilet or bathtub or shower.

Inert Fill - Material placed on or into the ground as fill that will not react chemically with soil, geologic material, or groundwater.

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.

Industrial Waste - Wastes resulting from the processes employed in industrial manufacturing, trade, or business establishments.

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.

Intensive Open Space Uses - Uses of open space which have the potential, because of their duration, frequency, or nature, to significantly impact the environment, particularly the groundwater quality and quantity.

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.

Landfill - An area used for the placement of solid waste, liquid waste or other discarded material on or in the ground.

Lagoon - An artificial enlargement of a water body, primarily by means of dredging and excavation.

- Licensed Forester - a forester licensed under 32 M.R.S.A. Chapter 76.
- Lot - A parcel of land in single ownership, described in a deed, plot or similar legal document.
- Lot Area - The total horizontal area within the lot lines. Within the Shoreland Zone, 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.
- Lot, Corner - A lot with at least two (2) contiguous sides abutting upon a street.
- Lot of Record - A parcel of land, a legal description of which or the dimensions of which are recorded on a document or Map on file with the County Register of Deeds or in common use by Town or County Officials.
- Lot, Shorefront - any lot abutting a water body or wetland as defined herein.
- Marina - A shorefront commercial facility with the provisions for one (1) or more of the following; boat storage, boat launching or the sale of supplies or services for watercraft or their equipment and accessories. 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.
- Mobile Home - Structure designed as a dwelling unit, and not considered as a recreation vehicle, with or without a permanent foundation containing kitchen facilities, including major appliances and furniture, with plumbing and electrical connections provide for attachment to outside systems; and designed to be transported after fabrications on its own wheels. Such structures shall meet or exceed the National Manufactured Home Construction & Safety Act of 1974 (P.L. 3-383, Title VI, as amended). For purposes of this ordinance, a Mobile Home is considered a residential dwelling unit.
- Mobile Home Park - A plot of land laid out to accommodate at least two (2) mobile homes.
- Multi-unit residential - a residential structure containing three (3) or more residential dwelling units.
- Native - indigenous to the local forests.
- Non-Conforming Building, Structure or Use - A building, structure or use of land, or portion thereof, existing at the effective date of adoption or amendment of this Ordinance which does not conform to all applicable provisions of this Ordinance.
- 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, or lot coverage.

- Non-conforming use - use of buildings, structures, premises, land or parts thereof which is not allowed in the district in which it is situated.
- 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.
- Nursery (see agriculture)
- Open-Space Use - A use not involving a structure; earth-moving activity; or removal or destruction of vegetative cover, spawning grounds, or fish, aquatic life, bird and other wildlife habitat.
- Park - Land area set aside for public recreation, conservation, wildlife, or other similar purpose.
- Parking Space - A minimum of three hundred (300) square feet, exclusive of drives, aisles or entrances, fully accessible for the storage or parking entity.
- Paving - (see construction)
- 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.
- Pesticide, Herbicide Bulk Storage - Storage of herbicides or pesticides intended for sale or intended for application on commercial premises or intended for application on cash crops. Homeowner storage or storage by non-commercial gardeners is not included.
- Piers, docks, wharves, bridges and other structures and uses extending over or beyond 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.
- Premises - One (1) or more lots which are in the same ownership and are contiguous or separated only by a road or water body, including all buildings, structures and improvements.
- Principal structure - a building other than one which is used for purposes wholly incidental or accessory to the use of another building or use on the same premises.
- Principal use - a use other than one which is wholly incidental or accessory to another use on the same premises.
- Privy - A pit in the ground into which human excrement is placed.
- 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.
- Public Utility - Any person, firm, corporation, municipal department, board or commission authorized to furnish gas, steam, electricity, waste disposal, communications facilities, transportation or water to the public.
- Recent floodplain soils - the following soil series as described and identified by the National Cooperative Soil Survey:
- | | | |
|----------|---------|----------|
| Fryeburg | Hadley | Limerick |
| Lovewell | Medomak | Ondawa |
| Alluvial | Cornish | Charles |
| 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 (RV) - A vehicle or vehicular attachment designed for temporary sleeping or living quarters for one (1) or more persons, which is not a dwelling and which may include a pick-up camper, travel trailer, tent trailer and motor home. 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, camptrailer, 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.
- 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.
- Salt or Sand/Salt Piles (covered) - Storage of salt or sand/salt mix intended for municipal, commercial or other use beneath a roof or other structure capable of preventing precipitation from reaching the salt or Sand/salt.
- Salt or Sand/Salt Piles (uncovered)- Storage of any amount of salt or sand/salt mix, for any purpose, without a roof or other structure capable of preventing precipitation from reaching the salt or sand/salt.
- 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 (1000) 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 (1000) feet in length.

- Setback - The minimum horizontal distance from a lot line or roadway centerline to the nearest part of a structure. 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.
- 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 Birch Harbor Pond; 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.
- Silvaculture - (see agriculture)
- Sign, Off-Premise - A name, identification, description, display or illustration which is affixed to, painted or represented, directly or indirectly upon a building, structure, parcel or lot and which related to an object, product, place, activity, person, institution, organization or business which is located on some other premises.
- Sign, On Premise - A name, identification, description, display or illustration which is affixed to, painted or represented, directly or indirectly upon a building, structure, parcel or lot and which related to an object, product, place, activity, person, institution, organization, or business on the premises.
- 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.
- Sludge - Residual material produced by water or sewer treatment processes, industrial processes, or domestic septic tanks.
- Sludge Utilization - The spreading of sludge on the ground or other use of sludge which might expose surface or groundwater to the sludge.
- Snow Dump - A location to which snow is transported and dumped by commercial, municipal, or State snow-plowing operations.
- Solid Waste - Discarded solid material with insufficient liquid content to be free flowing. This includes but is not limited to rubbish, garbage, scrap materials, junk, refuse, inert fill materials and landscape refuse.
- SPCC Plan - Spill Prevention Control and Countermeasure Plan as described in 40CFR, Part 112 of Federal Oil Pollution Prevention Regulations.
- Storm water Drainage - A sewer or other system for conveying surface runoff due to storm events and unpolluted ground or surface water, including that collected by cellar drains, but excluding sanitary sewage and industrial waste.
- Storm water Impoundment - Any structure designed and constructed to contain storm water runoff.
- Stream - a free-flowing body of water from the outlet of Birch Harbor Pond or the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within the shoreland area.
- Structure - anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences, and poles, wiring and other aerial equipment normally associated with service drops as well as guying and guy anchors. The term includes structures temporarily or permanently located, such as decks, patios, and satellite dishes.

- Subdivision - A subdivision shall be defined as stated in Title 30-A, MRSA, Section 4401, as amended.
- Subdivision Cluster - A residential subdivision wherein the dwelling does not occupy a lot meeting the minimum dimensional requirements of this Ordinance for the district in which it is located but where the overall density (number of dwellings per acre) does not exceed that required by such minimum lot size requirements. This shall include Mobile Home Parks.
- Substantial start - completion of thirty (30) percent of a permitted structure or use measured as a percentage of estimated total cost.
- Subsurface injection - (see subsurface wastewater disposal)
- 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 M.R.S.A. section 414, any surface waste water disposal system, or any municipal or quasi-municipal sewer or waste water treatment system.
- Subsurface Wastewater Disposal System - A collection of treatment tank(s), disposal area(s), holding tank(s) and pond(s), surface spray system(s), cesspool(s), well(s), surface ditch(es), alternative toilet(s), or other devices and associated piping designed to function as a unit for the purpose of disposing of wastes or wastewater on or beneath the surface of the earth. The term shall not include any wastewater discharge system licensed under 38 MRSA Section 414, any surface wastewater disposal system licensed under 38 MRSA section 413, Subsection 1-A, or any public sewer, sewerage system, or wastewater treatment plant.
- 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. 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.
- Transfer station - Facility designed for temporary storage of discarded material intended for transfer to another location for disposal, re-use, and/or processing.
- 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.
- Underground Storage Tank - As defined by State of Maine regulations published by the Maine Department of Environmental Protection.
- 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

Town of Winter Harbor

- vegetation, but such vegetation is dominated by woody stems that are six (6) meters (approximately twenty (20) foot) tall or taller.
- Use - The purpose for which land or a structure is arranged, designed, or intended, or for which land or structure is or may be occupied.
- Utility Corridor - Right-of-way, easement, or other corridor for transmission wires, pipes or other facilities, for conveying energy, communication signals, fuel, water, wastewater, etc..
- 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.
- Velocity zone - an area of special flood hazard extending from offshore to the inland limit of the primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.
- 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.
- Waste disposal, Industrial/Commercial - (see industrial waste)
- Wastewater - Any combination of water-carried wastes from institutional, commercial and industrial establishments, and residences, together with any storm, surface or groundwater as may be present.
- Wastewater Treatment Plant - Any arrangement of devices and structures used for treating wastewater.
- Water Body - Birch Harbor Pond, or a stream.
- Water Crossing - any project extending from one bank to the opposite bank of a stream, tributary, 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 maintained work on these crossings. This definition includes crossings for timber harvesting equipment and related activities.
- Watershed - Land lying adjacent to water courses and surface water bodies which creates the catchment or drainage area of such water courses and bodies; the watershed boundary is determined by connecting topographic high points surrounding such catchment or drainage areas.
- Wellhead - The specific location of a well (a hole or shaft dug or drilled to obtain water) and/or any structure built over or extending from a well.
- Wellhead Protection Area- A zone, consisting of two (2) districts, delineated according to Article III, Section 12-315 of this Ordinance.
- Well, abandoned - A shaft, casing, tile, hole, or pipe placed, drilled or dug in the ground for the extraction or monitoring of groundwater that has not been used for a period of two (2) consecutive years.
- Well, Existing or New - A shaft, casing, tile, hole, or pipe placed, drilled, or dug in the ground for extraction or monitoring of groundwater.
- Wetland - a freshwater or coastal wetland.
- Windfirm - the ability of a forest stand to withstand strong winds and resist windthrow, wind rocking, and major breakage.
- Woody Vegetation - live trees or woody, non-herbaceous shrubs.

BIRCH HARBOR POND PROTECTION ORDINANCE

Findings and purpose. Birch Harbor Pond, a surficial aquifer located in the Town of Winter Harbor, is the Town's secondary drinking water supply. As such, it needs special protection, to ensure the availability of an abundant supply of clean water for the use of the Town's people.

Definitions.

1. "Litter" means all waste material including, but not limited to, any bottles, glass, crockery, cans, scrap metal, junk paper, garbage, rubbish, offal, feathers, except feathers from live birds while being transported, old automobiles or parts thereof, or similar refuse, or disposable packages or containers thrown or deposited as prohibited in this ordinance, but not including the wastes of the primary processes of logging.
2. "Motorized vehicles" means and includes motor vehicles as defined by 29-A MRSA, Section 101(42) but including also snowmobiles, all-terrain vehicles, and motorized wheelchairs.

Prohibitions. The following acts are prohibited:

1. Use of petroleum-based fuels for powered watercraft. Only battery, wind, or human-powered watercraft may be operated on the waters of Birch Harbor Pond.
2. Parking or operation of motorized vehicles on ice on Birch Harbor Pond.
3. Littering
4. Swimming.
5. Allowing domestic pets to enter the water.

Penalty; enforcement. A person violating a prohibition commits a civil violation for which a penalty of not less than \$100 may be adjudged for a first offense and not less than \$250 for a second offense. Each and every day on which a violation occurs shall constitute a separate offense. The Code Enforcement Officer may issue summons and enforce this ordinance pursuant to 30-A MRSA Section 4452. All penalties recovered accrue to the benefit of the Town of Winter Harbor.

Severability. Should any part of this ordinance be found unenforceable by a court of competent jurisdiction, the remainder of the ordinance will remain in full force and effect.

Clerk note: Adopted June 17, 2003



TOWN OF WINTER HARBOR

PO Box 98, 23 HARBOR ROAD

WINTER HARBOR, MAINE

04693-0098

TEL: 963-2235 FAX: 963-2140

email: winterharbortown@myfairpoint.net

April 5, 2011

DIRECTIONAL & ON-PREMISE SIGN ORDINANCE

PART 1 - DIRECTIONAL SIGNS

TABLE OF CONTENTS

SECTION	DESCRIPTION	PAGE
101	TITLE	2
102	PURPOSE	2
103	AUTHORITY	2
104	DEFINITIONS	2
105	SIGN REGULATIONS	3
106	PERMITS	4
107	FEES	4
108	RENEWAL	4
109	COSTS	5
110	VALIDITY AND SEVERABILITY	5
111	PENALTY	5
112	REMOVAL OF UNLAWFUL SIGNS	5
113	EXCEPTIONS	5

**Town of Winter Harbor
Directional & On-Premise Sign Ordinance**

SECTION 101: TITLE

This Ordinance shall be known as the Directional Sign Ordinance of the Town of Winter Harbor, Maine.

SECTION 102: PURPOSE

The purpose of this part of the Ordinance is to promote the health, safety and general welfare by:

- A. Providing tourists, travelers and other users of the public ways in the Town of Winter Harbor with information and guidance concerning public accommodations, facilities, commercial services and points of scenic, cultural, historic, educational, recreational and religious interest.
- B. Reducing visual distractions which pose a hazard to drivers of motor vehicles and other users of public ways.
- C. Preserving, enhancing, and protecting the natural scenic beauty and other aesthetic features of the Town.

SECTION 103: AUTHORITY

This Ordinance is enacted pursuant to 30 MRSA, Sections 1917 and 2151, and 23 MRSA, Section 1922.

SECTION 104: DEFINITIONS

- A. **SIGN**: Sign means any structure, display, logo, device or representation which is designed or used to advertise or call attention to anything, person, activity or place and is visible from any public way.
- B. **DIRECTIONAL SIGN**: Directional sign means an Official Public Directional Sign or Official Business Directional Sign as defined herein.
- C. **OFFICIAL PUBLIC DIRECTIONAL SIGN**: Official Public Directional sign means a sign erected and maintained in accordance with the Maine Traveler Information Services Act, 23 MRSA, Sections 1901-1925, which provides a welcome to Winter Harbor.
- D. **OFFICIAL BUSINESS DIRECTIONAL SIGN**: Official Business Directional Sign means a sign erected and maintained in accordance with the Maine Traveler Informational Services Act, 23 MRSA, Sections 1901-1925, which points the way to public accommodations and facilities, commercial services for the traveling public, and points of scenic, historic, cultural, recreational, educational and religious interest. All such accommodations, facilities, services and points of interest must be located within the Town of Winter Harbor, seven (7) miles radius of said sign if the business is located outside the corporate boundaries of Winter Harbor.

**Town of Winter Harbor
Directional & On-Premise Sign Ordinance**

E. GROUP SIGN BOARD: Group Sign Board means an Official Business Directional Sign which consists of two or more Component Signs.

F. COMPONENT SIGN: Component Sign means an Official Business Directional Sign which points the way to only one public accommodation, facility, commercial service or point of interest, and is placed within a Group Sign Board.

G. INDIVIDUAL DIRECTIONAL SIGN: Individual Directional Sign means an Official Business Directional Sign which points the way to only one public accommodation, facility, commercial service or point of interest, and which is not placed within a Group Sign Board.

SECTION 105: SIGN REGULATIONS

A. COMPLIANCE WITH ORDINANCE, STATUTE AND REGULATIONS

No person may erect or maintain any Directional Sign visible from a public way in the Town of Winter Harbor except as provided in this Ordinance. All Directional Signs erected or maintained in the Town of Winter Harbor shall also comply with the provisions of the Maine Traveler Information Act, 23 MRSA, Sections 1901-1925 and any regulations of the Maine Department of Transportation promulgated there under.

B. SIZE, SHAPE, AND COLOR

1. The size, shape and color of the official Public Directional Signs shall be of a size, shape and color to be appointed by the Downtown revitalization committee and Planning Board.
2. The Group Sign Board at the intersection of Main and Newman Streets shall be limited to Town businesses only. Component Signs should not extend above ninety-six (96) inches nor below twenty-four (24) inches from the ground. A Group Sign Board contains two or more Component Signs, which shall comply with subsection 3 of this section.
3. Individual Directional Signs and Component Signs in all districts shall be eight (8) inches tall by forty-eight (48) inches wide. They shall bear the name of one public accommodation, facility, service, or point of interest and directions pointing the way to such. Lettering shall be black on a white background. No logos allowed.

C. LOCATION: All Directional Signs shall be located on public property. The location of Directional Signs shall be determined by the Planning Board. Individual Directional and Component Signs shall only be located where the traveler must change directions from one public way to another to reach the business.

D. INSTALLATION AND REMOVAL: The Town of Winter Harbor will be responsible for the installation and removal of Directional Signs in accordance with this Ordinance. All Directional Signs which do not conform with the provisions of this Ordinance shall be removed within one year of the enactment of this Ordinance.

**Town of Winter Harbor
Directional & On-Premise Sign Ordinance**

E. INSPECTION: The Code Enforcement Officer is responsible for the inspection of all Directional Signs.

F. REPAIR AND REPLACEMENT: Any Directional Sign erected pursuant to this Ordinance which is lost, stolen, defaced, or deteriorated shall be repaired or replaced by the owner upon notification by the Planning Board. The cost of such repair or replacement shall be charged as provided in Section 110 of this Ordinance.

SECTION 106: PERMITS

A. APPLICATION: Any person wishing to have an Official Business Directional Sign erected shall make application for a permit to the Code Enforcement Officer on an approved form.

B. ISSUANCE OF PERMITS, STANDARDS: The Planning Board shall issue a permit if it determines there is a need for such Official Business Directional Sign to guide the traveling public, to avoid confusion, or to reduce or eliminate a safety risk. If the Planning Board determines that there is no such need, then the Board shall deny the application and notify the applicant in writing and inform the applicant of the right to appeal in accordance with the provisions of Section 12-312, C.3. of the Winter Harbor Zoning Ordinance.

C. LIMITATION ON NUMBER OF SIGNS: The Planning Board shall issue no more than three (3) permits for Directional Signs for any one public accommodation, facility, service or point of interest.

SECTION 107: FEES

The Town of Winter Harbor shall collect an annual fee as follows for each permit issued pursuant to this Ordinance.

- A. Thirty dollars (\$30) for each Component Sign of a Group Sign for the initial year.
- B. Fifty dollars (\$50) for each Individual Directional Sign for the initial year.
- C. Twenty dollars (\$20) per sign annual fee thereafter.

The appropriate fee shall be submitted with each application for a permit or renewal of a permit under this Ordinance.

SECTION 108: RENEWAL

Permits issued pursuant to this Ordinance shall be valid through the 31st day of December of the year of issuance and may be renewed by submitting a renewal application on a form approved by the Planning Board together with the appropriate application fee. If upon the receipt of any renewal application, the Planning Board determines that there is no longer a need for the sign or signs to guide the traveling public, to avoid confusion or to reduce or eliminate a safety risk, then the Planning Board shall deny the renewal request and notify the applicant in writing of the denial and his right to appeal. Any permit which is not renewed shall expire on the first day of January of the following year.

**Town of Winter Harbor
Directional & On-Premise Sign Ordinance**

SECTION 109: COSTS

The Planning Board shall collect all fees and provide and pay for Official Public Directional Signs and the posts and frames of group Sign Boards. Applicants for permits for Official Business Directional Signs shall pay for the Component Signs to be placed within Group Sign Boards and for Individual Directional Signs. The costs of erecting Individual Directional Sign posts and placing Component Signs within a Group Sign Board shall be paid by the Applicant.

SECTION 110: VALIDITY AND SEVERABILITY

In the event that any provision of this Ordinance shall be declared by any court to be invalid for any reason, such decision shall not effect the validity of the other provisions or this Ordinance.

SECTION 111: PENALTY

Whoever violates any of the provisions of this Ordinance shall upon conviction thereof, be punished by a civil penalty not to exceed one hundred dollars (\$100). Each day of a violation of this Ordinance shall constitute a separate offense.

SECTION 112: REMOVAL OF UNLAWFUL SIGNS

The owner of any sign existing in violation of this Ordinance shall be in violation of this Ordinance until said sign is removed. The owner of the sign shall remove the sign within thirty (30) days after receipt of notice to remove, sent by certified mail, return receipt requested, by the Planning Board. If the identity of the owner of the sign is not known or not reasonably ascertainable by the Planning Board such notice may instead be sent to the owner of the land on which the sign is placed. If the owner fails to remove the sign as required, the Planning Board shall cause the sign to be removed without further notice or proceeding and the Town may recover the cost of such removal from the owner.

SECTION 113: EXCEPTIONS

The Acadia National Park sign at the entrance to the Moore Road is excepted from the provisions of this ordinance. No other off-premise sign belonging to the National Park Service or any other organization either private or public, is to be construed as being permissible under the provisions of this section.

**Town of Winter Harbor
Directional & On-Premise Sign Ordinance**

PART 2 - ON PREMISE SIGNS

TABLE OF CONTENTS

<u>SECTION</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
114	PURPOSE	7
115	DEFINITIONS	7
116	PERMIT REQUIRED	8
117	ON-PREMISE SIGNS	9

**Town of Winter Harbor
Directional & On-Premise Sign Ordinance**

SECTION 114: PURPOSE

The Town, after due and careful consideration, finds and declares that it desires to preserve the natural and scenic beauty of the Town, its rural area and water ways, where a proliferation of advertising and other signs would despoil the beauty of the Town and create hazards to vehicular and pedestrian traffic.

It is the intent and purpose of this Article to preserve the beauty of the Town and the safety and well being of the inhabitants while at the same time allowing reasonable advertising and informational signs by regulating the type, number, location, and size of such signs.

SECTION 115: DEFINITIONS

A. **BANNER:** Any sign of lightweight fabric or similar material that is mounted to a pole or a building at one or more edges. National, state, or municipal flags, or the official flag of any institution or business, shall not be considered banners.

B. **FLAG:** Any fabric or bunting containing distinctive colors, patterns, or symbols.

C. **PENNANT:** Any lightweight plastic, fabric, or other material, whether or not containing a message of any kind, suspended from a rope, wire, or string, usually in series, designed to move in the wind.

D. **SIGN:** Any device, fixture, placard, or structure that uses any color, form, graphic, illumination, symbol, or writing to advertise, announce the purpose of, or identify the purpose of a person or entity, or to communicate information of any kind to the public, including a sign located inside a window or door so that it is visible from the exterior of the building. Brand names and logos that are integral parts of a good to be sold are not considered signs under this Ordinance.

E. **SIGN AREA:** The area on one side of the smallest simple geometric shape exemplified by a square, rectangle, triangle, circle, etc., encompassing all lettering, wording, design, or symbols, together with any background which is distinguishable from the building. For the purpose of calculating the area of a sign, an inconspicuous support exemplified by a slim post is not part of the sign.

F. **SIGN, CANOPY:** A sign that is part of or attached to an awning, canopy, or other fabric, plastic, or structural protective cover over a door, entrance, window, or outdoor service area.

G. **SIGN, CONSOLIDATED:** A single on-premise sign that serves two or more businesses or entities, all of which are located on the same lot of record, which sign is on a single device, fixture, placard, or structure.

H. **SIGN, FREESTANDING:** A sign supported by one or more upright poles, columns, braces or structure anchored in the ground and not attached to any building or other structure.

**Town of Winter Harbor
Directional & On-Premise Sign Ordinance**

- I. **SIGN, ILLUMINATED:** A sign lit in any manner by an artificial source of light.
- J. **SIGN, EXTERNALLY ILLUMINATED:** A sign that is lit entirely from an external source, such as flood or spotlights, and is so arranged that no direct rays of light are projected from the external source into adjoining properties or public streets.
- K. **SIGN, INTERNALLY ILLUMINATED:** A sign whose lighting is integral to the sign and/or shines through a plastic or other translucent covering.
- L. **SIGN, OFF-PREMISE:** A sign that is not located on the same lot of record that the business, facility, or point of interest is located.
- M. **SIGN, ON-BUILDING:** A sign that is attached to the building wall and extends not more than six inches from the face of such wall.
- N. **SIGN, ON-PREMISE:** A sign that is located on the same lot of record that the business, facility, or point of interest is located.
- O. **SIGN, PORTABLE:** A sign that is not permanently attached to the ground or other permanent structure, or a sign designed to be transported, including, but not limited to, signs designed to be transported by means of wheels or trailer, balloons used as signs, and signs attached to or painted on vehicles parked and visible from the public right-of-way, unless said vehicle is used in the normal day-to-day operations of the business. For the purpose of this Ordinance, menu and sandwich board signs are not considered portable signs.
- P. **SIGN, PROJECTING:** A sign that is attached to the building wall and extends more than six inches from the face of such wall.
- Q. **SIGN, TEMPORARY:** A sign of a temporary nature, erected less than 90 days within any 12-month period, including the following: political signs, charitable signs, fundraising signs, carnival signs, garage sales, lawn sales, rummage sales, and sale of personal property. Any exterior sign displayed by an ongoing business on the business" premises in which the written or printed message changes while the structure of the sign remains unchanged shall not be considered as a temporary sign. For example, chalkboards and signs with removable lettering shall not be considered temporary signs.

SECTION 116: PERMIT REQUIRED

No person, firm or corporation shall hereafter erect, hang, place, or alter a sign or sign structure of any kind without a permit having been issued by the Code Enforcement Officer, upon payment of a \$5.00 permit fee. Any permit obtained subsequent to the erecting, hanging, placing, or altering a sign or structure shall be subject to a permit fee five times the scheduled fee. Every application for a sign permit shall be accompanied by plans to scale, showing the area of the sign, the position of the building structure or lot to which or upon which the sign is to be attached or erected, the method of illumination if any, and such other information as the Code Enforcement Officer shall require to show full compliance with this and all other laws and Ordinances of the Town. If it appears that the proposed sign is in compliance with all such requirements and laws, the permit shall be issued.

**Town of Winter Harbor
Directional & On-Premise Sign Ordinance**

SECTION 117: ON-PREMISE SIGNS

- A. Purpose - The following provisions shall govern the use of signs in all zones except Shoreland areas.
- B. Name signs will not exceed two (2) per premises.
- C. One additional sign shall be permitted if the building fronts upon more than one thoroughfare (including the harbor), said additional sign to front on said thoroughfare or waterfront.
- D. Property Owners may display a single sign, not to exceed four (4) square feet in area, relating to the sale, rental, or lease of the premises or land. Such signs do not require a permit.
- E. On Building signs will not exceed one (1) square foot per two (2) feet of the Primary Building frontage to a maximum of fifty (50) square feet in area.
- F. Signs relating to trespassing and hunting shall be permitted without restriction as to number provided that no such sign shall exceed two (2) square feet in area.
- G. Any sign now or hereafter existing which no longer advertises a bona fide business conducted, product sold, or activity or campaign being conducted shall be taken down and removed by the owner, agent, or person having the beneficial use of the building, structure, or lot upon which such sign may be found within 10 days after written notification from the Code Enforcement Officer. Failure to comply with such notice constitutes a violation of the terms of this Ordinance.
- H. Illuminated signs must be illuminated externally only, lighted from sources which are shielded from streets and adjoining property. There shall be no exposed source of illumination. The intensity of light shall remain constant in color, location and brightness. No sign shall constitute a hazard to the flow of vehicular safety.
- I. Signs on public buildings and lands will conform to the same parameters as those on privately owned properties.
- J. Signs relating to public safety shall be permitted without restriction.
- K. Flags, banners, and pennants may be used for the promotion of an event by a civic group, organization, or arts group, provided they are displayed for no longer than fourteen (14) consecutive days. For uses of more than fourteen (14) days, Planning Board Approval must be obtained. A permit from the Code Enforcement Officer for such flags, banners, and pennants shall be required for each event. All other use of flags, banners, and pennants as signs is prohibited; however, nothing in this Ordinance shall prohibit the flying of national, state, or municipal flags, or the official flag of any institution or business.

**Town of Winter Harbor
Directional & On-Premise Sign Ordinance**

L. Freestanding signs: One sign with a maximum height of 9 feet measured from the ground to top of the highest support or top of sign, with a maximum sign area of 16 square feet per side (max of 2 sides).

M. The following signs are exempted from the provisions of this Ordinance:

- (1) Any sign which was lawfully in existence prior to the date of the adoption of this Ordinance. However, any change in lettering, size, construction, wording, location, or lighting of said sign shall constitute a new sign and such change shall be governed by the terms of this Ordinance;
- (2) House addresses, family name signs and no trespassing signs;
- (3) Traffic control signs and safety signs including handicapped access signs
- (4) Construction signs
- (5) "OPEN" flags

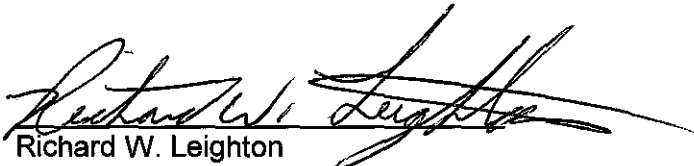
This Part 2 supersedes section 8 (see 12-313) titled On-Premise Signs in the Zoning Ordinance dated 10/28/04.

Revision of this Ordinance adopted and accepted on **May 3, 2011**.

BOARD OF SELECTMEN


Terry D. Bickford


Benjamin G. Newman


Richard W. Leighton

**E-9-1-1 ADDRESSING ORDINANCE
TOWN OF WINTER HARBOR, MAINE**

Section 1. Title

This ordinance will henceforth be known as the "Addressing Ordinance."

Section 2. Purpose

The purpose of this ordinance is to enhance the easy and rapid location of structures by law enforcement, fire, rescue, and emergency medical services personnel in the town of Winter Harbor.

Section 3. Authority

This ordinance is adopted pursuant to and consistent with Municipal Home Rule Powers as provided for in Article VIII, Part 2, Section 1 of the Constitution of the State of Maine and Title 30-A M.R.S.A. Section 3001.

Section 4. Administration

This ordinance shall be administered by the selectmen who *is* authorized to and shall assign road names, and have numbers assigned by the Addressing Officer to all properties, both on existing and proposed roads, in accordance with the criteria in Sections 5 and 6. The *Addressing Officer* shall be responsible for maintaining the following official records of this ordinance:

- a. A municipal map(s) for official use showing road names and numbers.
- b. An alphabetical list of all property owners as identified by current tax records, by last name, showing the assigned numbers.
- c. An alphabetical list of all roads with property owners listed in order of their assigned numbers.

The board of selectmen shall designate an Addressing Officer, who is a member of the Municipal Fire Department and approved by the Fire Department and is responsible for and authorized to provide all required addressing and database information to the state agency responsible for the implementation of Enhanced 9-1-1 service.

Section 5. Naming System

All roads that serve two or more structures, or have a realistic potential for two or more structures shall be named regardless of whether the ownership is public or private. A "road" refers to any highway, road, street, avenue, lane, private way, or similar paved,

gravel, or dirt thoroughfare. A road name assigned by the municipality shall not constitute or imply acceptance of the road as a public way.

The following criteria shall govern the naming system:

- a. No two roads shall be given the same name (ex. Pine Road and Pine Lane).
- b. No two roads shall have similar-sounding names (ex. Beech Lane and Peach Lane).
- c. Each future road shall have the same name throughout its entire length.

Section 6. Numbering System

The following criteria shall govern the numbering system:

- a. Numbers shall be assigned every 25 (twenty-five) feet along both sides of the road, with even numbers appearing on the right side of the road and odd numbers appearing on the left side of the road, Starting at a point 25 (twenty-five) feet from the center point of the base road as the numbers ascend.
- b. All number origins shall begin from the town line with Gouldsboro (at Birch Harbor) or that end of a road closest to the designated origin. For dead end roads, numbering shall originate at the intersection of the adjacent road and terminate at the dead end.
- c. The number assigned to each structure shall be that of the numbered interval falling closest to the front door or the driveway of said structure if the front door cannot be seen from the main road.
- d. Every structure with more than one use or occupancy shall have a separate number for each use or occupancy, i.e. an apartment house shall have one road number with an apartment letter or number for each apartment, such as 235 Maple Road, Apt C. Or a business with an apartment above. The primary use (the business) would be 235 Maple Road, and the apartment would be 235 Maple Road, Apt A.

Section 7. Compliance

All owners of structures shall display and maintain in a conspicuous place on said structure, assigned numbers in the following manner:

- A. Numbers that are at least 3 (three) inches in height.
- B. A contrasting color with the surface to which they are affixed.
- C. One of the suggested locations below which makes them clearly visible and legible from street.

Order of preference:

1. Left or right side of front door. (above or below is not recommended).
 2. On a corner of the structure facing the street when the front entrance does not.
 3. On a conspicuous post (above the snow line) at the drive entrance if the house is not clearly visible.
- D. Proper number. Every person whose duty is to display an assigned number shall remove any different number which might be mistaken for, or confused with, the number assigned in conformance with this ordinance.
- E. Interior location. All residents and other occupants are requested to post their assigned number and road name adjacent to their telephone for emergency reference.

Section 8. New Construction and Subdivisions

All new construction and subdivisions shall be named and numbered in accordance with the provisions of this ordinance and as follows:

- a. New Construction. Whenever any residence or other structure is constructed or developed, it shall be the duty of the new owner to obtain an assigned number from the Addressing Officer directly or through the town office.
This shall be done at the time of the issuance of the building permit.
- b. New Subdivisions. Any prospective subdivider shall show a proposed road name and lot numbering system on the pre-application submission to the Planning Board. Approval by the Selectmen after consultation with Addressing Officer shall constitute the assignment of road names and lot numbers to the lots in the subdivision. On the final plan showing proposed roads, the applicant shall mark on the plan, lines or dots, in the center of the streets every 25 (twenty-five) feet so as to aid in the assignment of numbers to structures subsequently constructed.

Section 9. Effective Date

This ordinance shall become effective as of the 1999 annual town meeting. On new structures, numbering will be installed when the structure is first used or occupied, whichever comes first.

FLOODPLAIN MANAGEMENT ORDINANCE
FOR THE
TOWN OF WINTER HARBOR, MAINE

ENACTED: 6/19/01

Date RB

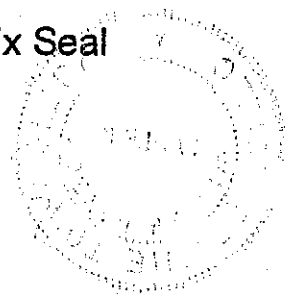
CERTIFIED BY: ROGER BARTO

Name

Clerk

Title

Affix Seal



FLOODPLAIN MANAGEMENT ORDINANCE

CONTENTS

ARTICLE	PAGE
I. PURPOSE AND ESTABLISHMENT	2
II. PERMIT REQUIRED	2
III. APPLICATION FOR PERMIT	2
IV. APPLICATION FEE AND EXPERT'S FEE	4
V. REVIEW STANDARDS FOR FLOOD HAZARD DEVELOPMENT PERMIT APPLICATIONS	5
VI. DEVELOPMENT STANDARDS	6
VII. CONDITIONAL USE REVIEW	14
VIII. CERTIFICATE OF COMPLIANCE	15
IX. REVIEW OF SUBDIVISIONS AND DEVELOPMENT PROPOSALS	15
X. APPEALS AND VARIANCES	16
XI. ENFORCEMENT AND PENALTIES	18
XII. VALIDITY AND SEVERABILITY	19
XIII. CONFLICT WITH OTHER ORDINANCES	19
XIV. DEFINITIONS	19
XV. ABROGATION	24

ARTICLE I - PURPOSE AND ESTABLISHMENT

Certain areas of the Town of Winter Harbor, 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 Winter Harbor, 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 Winter Harbor, 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 Winter Harbor 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 and 4401-4407.

The National Flood Insurance Program, established in the aforesaid Act, provides that areas of the Town of Winter Harbor 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 Winter Harbor, Maine.

The areas of special flood hazard, Zones A, AE, and VE, are identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study - Town of Winter Harbor, Maine, Hancock County," dated May 15, 1991 with accompanying "Flood Insurance Rate Map" dated May 15, 1991, which 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 Planning Board 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 Winter Harbor, Maine.

ARTICLE III - APPLICATION FOR PERMIT

The application for a Flood Hazard Development Permit shall be submitted to the Planning Board 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), 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 - Town of Winter Harbor, 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/July 1995), 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, 08/99, 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 \$ ^{Substantial/Minor or} ~~50~~ / ^{New Add} ~~25~~ shall be paid to the Town Clerk and a copy of a receipt for the same shall accompany the application.

An additional fee may be charged if the 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 Planning Board 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 data contained in the "Flood Insurance Study - Town of Winter Harbor, Maine," as described in Article I.;
 - 2. in special flood hazard areas where base flood elevation data are not provided, the Planning Board 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 in the State Planning Office.
- 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. 1334;
- E. Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Floodplain Management Program in the State Planning Office 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 second 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 so as 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. Zone 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. Zone 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. Zone 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. or b., or Article VI.P.

J. **Accessory Structures** - Accessory Structures, as defined in Article XIV, located within Zones AE and A, 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. be 500 square feet or less and have a value less than \$3000;
2. have unfinished interiors and not be used for human habitation;
3. have hydraulic openings, as specified in Article VI.L.2., in at least two different walls of the accessory structure;

4. be located outside the floodway;
5. 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,
6. 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 Chapter 5 entitled "Hydraulic Analyses," *Flood Insurance Study - Guidelines and Specifications for Study Contractors*, (FEMA 37/ January 1995, as amended).
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 AE and A 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 AE, A, 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 AE, A, 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 AE, A, 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, A, 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 with non-supporting breakaway walls which 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/February, 1986); 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 enclosed areas may 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 Planning Board 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 with 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 or 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 so as 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 Winter Harbor 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 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 it deems 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 Planning Board and Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Planning Board 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 MRS § 4452.

- B. The penalties contained in Title 30-A MRSA § 4452 shall apply to any violation of this Ordinance.
- C. In addition to any other actions, the Code Enforcement Officer, upon determination that a violation exists, shall submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of flood insurance. 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 - means a small detached structure that is incidental and subordinate to the principal structure.

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

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

Basement - means any area of the building having its floor subgrade (below ground level) on all sides.

Breakaway Wall - means 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 - any person or board responsible for performing the inspection, licensing, and enforcement duties required by a particular statute or ordinance.

Conditional Use - means 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.

Development - means any change caused by individuals or entities to improved or unimproved real estate, including but not limited to the construction of buildings or other structures; the construction of additions or substantial improvements 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, public or private sewage disposal systems or water supply facilities.

Elevated Building - means a non-basement building

- a. built, in the case of a building in Zones AE or A, to have the top of the elevated floor, or in the case of a building in Zones V1-30, or 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 so as not to 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 AE or A, **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 Zones V1-30, or 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, 08/99, 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 - means:

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

Flood Insurance Rate Map (FIRM) - means 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 Flood-prone Area - means any 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 - means 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 - means 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 - mean the lines marking the limits of floodways on federal, state, and local floodplain maps.

Freeboard - means 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, that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

Functionally Dependent Use - means a use which 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 - means, 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) 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 - means 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 - means 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 - means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

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

New Construction - means 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.

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

Recreational Vehicle - means a vehicle which 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. means 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 - means 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 - means 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).

60.3(e)



Town of Winter Harbor

PO Box 98, 20 School Street
Winter Harbor, Maine
04693-0098

Tel: 963-2235 Fax: 963-2140
email: winterharbortown@myfairpoint.net

Harbor Management

Sections

- 101 Authority
- 102 Purpose
- 103 Harbor Committee
- 104 Harbor Master
- 105 Moorings
- 106 Regulations
- 107 Fees
- 108 Signs
- 109 Violation of Provisions
- 110 Appeals
- 111 Amendments
- 112 Supersedure
- 113 Validity and Separability

HARBOR MANAGEMENT ORDINANCE

101. Authority

This Ordinance is created under the authority granted the Town by Title 38 MRSA, Chapter One.

102. Purpose

The purpose of this Ordinance is to provide the maximum and most equitable use of the town pier and harbor facilities for the inhabitants of Winter Harbor, to make the best use of mooring space in Winter Harbor waters, and to promote the welfare of its users.

103. Harbor Committee

A. Appointment - The committee members shall be residents of Winter Harbor and shall be elected annually at Town Meeting.

B. The Committee will consist of seven members broken down as follows:

- (1) Three members shall be commercial fishermen.
- (2) Two members shall be recreational boaters.
- (3) Two members shall be resident non-boaters.

C. Duties of the Harbor Committee

- (1) To plan the development of and establish policy for the waters of the Town of Winter Harbor.
- (2) To create and maintain a Harbor Ordinance.
- (3) To resolve conflicts that may arise as a result of the Harbor Ordinance.
- (4) To be responsible for recommending a candidate as Harbor Master to be appointed by the Board of Selectmen
- (5) To review the activities of the Harbor Master.
- (6) To prepare an annual wharf and harbor budget for recommendation to the voters at Town Meeting.

D. Term

Each member shall be elected for a one-year term and re-elected annually by the legislative body at Town Meeting.

E. Meeting

The committee shall meet monthly on the third Wednesday unless other arrangements are made at the preceding meeting.

F. Quorum

A majority of the members appointed to the committee shall constitute a quorum.

G. Vote

The committee decisions will be made by vote of a majority of members present and noting absentee voting.

104. Harbor Master

A. Appointment

The Harbor Master shall be appointed annually by the Board of Selectmen with the recommendation of the Harbor Committee.

B. Duties

The Harbor Master shall:

- (1) Enforce the provisions of the harbor ordinance.
- (2) Provide advice and information to the Harbor Committee and attend meetings of committee.
- (3) Assign temporary and permanent berthing and mooring locations within the harbors.
- (4) Monitor the condition of town pier, floats, moorings, utilities and structures for proper and safe operation and coordinate repairs.
- (5) Carry out the responsibilities delegated by state and federal agencies.

C. Compensation

The Harbor Committee shall recommend a compensatory sum annually to the legislative body at town meeting for approval.

105. Moorings

A. Mooring Placement - No person shall place or relocate a mooring or mooring buoy of any type within the boundaries of Winter Harbor waters without the permission of the Harbor Master. The Harbor Master is empowered to require that any mooring be moved at any time at the owner's expense. Failure to move or remove a mooring at the request of the Harbor Master will be a violation of this Ordinance. An annual fee is assessed for each boat and/or float mooring.

B. Mooring Inspections shall be conducted by the Harbor Master at his discretion. Defects shall be corrected within a time period determined by the Harbor Master. Failure to correct defects will result in the loss of the assigned mooring berth.

C. Mooring Assignment Appeals - Any person adversely affected by the assignment of mooring locations may appeal to the Harbor Committee. The Harbor Committee's decision shall be final.

106. Regulations

A. Vessels shall be operated in the harbor in a reasonable manner so as not to endanger persons or property or to cause excessive wake. In no case shall speeds exceed five knots while operating in anchorage or mooring areas.

B. No registered or documented craft shall be allowed to lay at the town floats for longer than one (1) hour unless authorized by the Harbor Master.

C. No tenders, dinghies or punts shall be used without the owner's permission.

D. No mooring shall be placed in the tidal waters of Winter Harbor without the express permission of the Harbor Master.

E. No mooring shall be sold or transferred to another person without permission of the Harbor Master, and no mooring shall be loaned for more than six months without transferring ownership.

F. No lobster traps, fishing supplies or boat equipment shall be allowed to remain on the town floats, town pier, beach area, or parking area for a period longer than twenty-four (24) hours.

G. No overnight camping shall be allowed in the town pier parking lot. Posted regulations regarding parking and use of the wharf shall be observed.

H. No trash, oil, or garbage shall be emptied into the waters of Winter Harbor.

I. No dumping of bait, scallop shells, pickles, crabs, or by-product of commercial fisheries in the Inner Harbor.

J. No person twelve (12) years of age or younger shall be allowed in the vicinity of the town pier without adult supervision.

K. There shall be no drinking of alcoholic beverages on the town floats, pier, beach area or parking lot.

L. Seafood buyers and non-residents who do business over Town-owned facilities shall be assessed a fee for this use of the facilities.

107. Fees

A. Fees for wharf use shall be \$1,000 annually for each buyer or dealer. A buyer or dealer is any individual or party who accepts marine produce from another individual or party either for the purpose of resale for profit or for the transport of said produce for profit. The annual fees shall be assessed for a year from the date of payment. The fee must be renewed annually.

B. Individual commercial boat owners who do not pay property taxes to the Town of Winter Harbor and who do business over the town wharf will be assessed a wharf usage fee of \$250 per boat annually. The annual fees shall be assessed for a year from the date of payment. The fee must be renewed annually.

C. Each applicant for a mooring in Winter Harbor shall pay a fee as described below:

a. \$30 – Resident and/or Non-Resident of the Town of Winter Harbor.

The fees shall be assessed annually and must be paid by June 30th of each year and will be collected at the Town Office. All fees accrue to the Town of Winter Harbor for the operation of the harbors, dock and boat ramp.

108. Signs

Signs shall be authorized by the Harbor Master as appropriate.

109. Violation of Provisions

Any person who continues to violate any provision of this ordinance after receiving notice of such violation shall be guilty of a civil violation and subject to one hundred dollars (\$100) for each violation. Each day a violation is continued shall be a separate offense.

110. Appeals

Any person adversely affected by a decision of the Harbor Master may appeal to the Harbor Committee.

111. Amendments

This Ordinance may be amended by a majority vote of the Legislative Body of Winter Harbor. Any revisions or amendments shall take effect immediately upon acceptance by the voters of the Town of Winter Harbor.

112. Supersedure

The adoption of this Ordinance hereby repeals and supersedes all conflicting provisions of all prior ordinances adopted.


113. **Validity and Separability**


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

Revision of this Ordinance adopted and accepted on June 14, 2017.

Board of Selectmen


Terry D. Bickford


Larry D. Smith, Jr.


William R. Faulkingham

**TOWN OF WINTER HARBOR
MOORING PERMIT APPLICATION**

Permit Fee: \$30 Annually

Date of Application: _____ Boat Use: _____ Personal _____ Commercial _____ Other

Boat Reg/Doc # _____ Boat Name: _____

Owner's Name: _____ Phone: _____

Address: _____

Winter Address (if different): _____

Description of Boat: Color: _____ Length: _____

Type of Propulsion: _____ Type of Boat: _____

Applicant's Signature: _____ Date: _____

If under 18 years of age, Parent/Guardian Signature: _____

~~~~~  
**For Town Office and Harbor Master Use Only:**

Date Application Received: \_\_\_\_\_ Amount Received: \_\_\_\_\_

Application: \_\_\_\_\_ Approved \_\_\_\_\_ Approved w/Conditions \_\_\_\_\_ Denied

If conditions, please list reasons for denial:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Harbor Master's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Town Clerk's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**TOWN OF WINTER HARBOR  
MOORING PERMIT**

For the sum of \$30, the Town of Winter Harbor, Maine hereby authorizes:

Name of Permittee: \_\_\_\_\_ of

Address: \_\_\_\_\_

To place a mooring in the waters off the Town of Winter Harbor in an area designated by the Harbor Master.

The Owner shall be responsible for the following:

1. Compliance with all Federal, State and Local laws, rules and regulations;
2. Maintenance of the vessel in a seaworthy condition;
3. Protection from hull damage to own and other vessels;
4. Set and maintain a safe mooring.

The Owner further agrees to hold the Municipality; its employees, agents or designees harmless from any damage, risk, or liability as a result of this authorization.

Boat Information:

Reg/Doc #: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Make: \_\_\_\_\_ Length: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

This permit is non-transferable and is for the use of the above named person only, except on a temporary basis at the discretion of the Harbor Master or designee.

Holder of permit is responsible to set mooring and make adjustments as required for the safety of all adjacent boats. Each boat must display the Mooring Permit sticker for the current year, showing the fee has been paid.

## Chapter 7

### Nuisances

#### Section 7-101 Purpose

To promote the general welfare and protect public health and safety of the Winter Harbor residents, from dangerous and/or hazardous conditions and to insure surface and ground water quality within the Town.

#### Section 7-102 Authority

Created pursuant to Title 30, MRSA, Section 1917, as amended.

#### Section 7-103 Miscellaneous Nuisance

The erection, continuance or use of any building or place for the exercise of a trade, employment, or manufacture which, by noxious exhalations, offensive smells or other annoyances, becomes injurious and dangerous to the health, comfort or property of individuals, or of the public; causing or permitting abandoned wells to remain unfilled or uncovered to the injury or prejudice of others; obstructing or impeding, without legal authority, the passage of any navigable river, harbor or collection of water; corrupting or rendering unwholesome or impure the water of a river, stream or pond; unlawfully diverting it from its natural course or state, to the injury or prejudice of others; and the obstructing or encumbering by fences, buildings or otherwise, places or burying grounds are nuisances within the limitations and exceptions mentioned. Any places where one (1) or more old, discarded, worn out or junked automobile or part thereof, are gathered together, kept, deposited or allowed to accumulate, in such manner or in such location or situation, either within or without the limits of any highway, as to be unsightly, detracting from the natural scenery and injurious to the comfort and happiness of individuals and the public, and injurious to property rights, are declared to be public nuisances. (See Title 17, MRSA, Section 2802, as amended.)

#### Section 7-104 Effective Date

This Ordinance shall be in effect upon adoption by the Legislative Body of the Town of Winter Harbor.

---

Historical Note: Adopted December 14, 1981.

30A 3009

1 E



**Town of Winter Harbor**  
PO Box 98, 20 School Street  
Winter Harbor, Maine  
04693-0098  
Tel: 963-2235 Fax: 963-2140  
*email: winterharbortown@myfairpoint.net*

## **SEWER AND DRAINS**

### **Public Sewer Ordinance**

#### **Sections**

- 8-101 Authority**
- 8-102 Purpose**
- 8-103 Definitions**
- 8-104 Use of Public Sewers Required**
- 8-105 Private Sewage Disposal**
- 8-106 Building Sewers and Connections**
- 8-107 Use of Public Sewers**
- 8-108 Protection From Drainage**
- 8-109 Powers and Authority of Inspectors**
- 8-110 Penalties**
- 8-111 Amendments**
- 8-112 Variances**
- 8-113 Validity**
- 8-114 Ordinance in force**

### **Section 8-101 Authority**

The Town is authorized to create this chapter according to the municipal powers set forth in Title 30A Chapter 141, Section 3001 et al.

### **Section 8-102 Purpose**

To regulate the use of the public and private sewage and drains, private sewage disposal, the installation and connection of building sewers, and the discharge of water and waste into the public sewer system(s); and provide penalties for the violations thereof: in the Town of Winter Harbor.

### **Section 8-103 Definitions**

- A. "BOD" (denoting Biological Oxygen Demand) shall mean the quantity of oxygen utilization in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20\* C, expressed in milligrams per liter, (mg/l).
- B. "Building Drain" shall mean that part of the lowest horizontal piping of drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet 1.5 meters outside the inner face of the building.
- C. "Building sewer" shall mean the extension from the building drain to the public sewer or other place of disposal.
- D. "Combined Sewer" shall mean a sewer receiving both surface run-off and sewage.
- E. "Garbage" shall mean solid waste from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.
- F. "Industrial Wastes" shall mean the liquid waste from industrial manufacturing processes, trade or business as distinct from sanitary sewage.
- G. "Natural Outlet" shall mean any outlet into a watercourse, pond, ditch, lake or other body of surface or groundwater.
- H. "Person" shall mean any individual, firm, company, association, society, corporation or group.
- I. "pH" shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.
- J. "Properly Shredded Garbage" shall mean the waste from the preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewer, with no particle greater than on-half (1/2) inch (1.27 centimeters) in any dimension.
- K. "Public Sewer" shall mean a sewer in which all owners of abutting properties have equal rights and is controlled by public authority.
- L. "Sanitary Sewer" shall mean a sewer that carries sewage and to which storm sewage, and groundwater are not intentionally admitted.
- M. "Sewage" shall mean a combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments together with such groundwater, surface water and storm water as may be present.
- N. "Sewage Treatment Plant" shall mean any arrangement of devices and structures used for treating sewage.

- O. "Sewage Works" shall mean all facilities for collecting, pumping, treating and disposing of sewage.
- P. "Sewer" shall mean a pipe or conduit for carrying sewage.
- Q. "Shall" is mandatory; "May" is permissive.
- R. "Sludge" shall mean any discharge of water, sewage or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration or flow during normal operation.
- S. "Storm Drain" (storm sewer) shall mean a sewer, which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.
- T. "Superintendent" shall mean the Superintendent of Sewer Works and/or of Water Pollution Control of the Winter Harbor Utilities District or his authorized deputy, agent or representative.
- U. "Suspended Solids" shall mean solids that either float on the surface of, or in suspension in water, sewage or other liquids and which are removable by laboratory filtering.
- V. "Watercourse" shall mean a channel in which a flow of water occurs, either continually or intermittently.
- W. "Septic tank Pumping" shall mean sewage removed from a cesspool or septic tank.
- X. "Grey Water" shall mean liquids and solid waste from fixtures and water-using appliances other than waste from toilets.
- Y. "Wastewater" shall mean sewage and industrial waste and/or Grey Water.

**Section 8-104 Use of Public Sewers Required**

- A. It shall be unlawful for any person to place, deposit or permit to be deposited in any unsanitary manner on public or private property within the Town of Winter Harbor or in any area under the jurisdiction of said Town, any human or animal excrement, garbage or other objectionable waste.
- B. It shall be unlawful to discharge to any natural outlet within the Town of Winter Harbor or in any area under its jurisdiction, any sewage or other pollutant except where suitable treatment has been provided in accordance with subsequent provisions of this ordinance.
- C. Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for disposal of sewage except as specified in Town zoning ordinance.
- D. The owner of all houses, buildings or properties in which facilities are installed which require the discharge of waste water used for human occupancy, employment, recreation or other purposes, situated within the Town and abutting on any street, alley or right-of-way in which there is now located or may in the future be located a public sanitary or combined sewer of the Utility District is hereby required at his own expense to connect such facilities directly with the public sewer system in accordance with provisions of this ordinance, within ninety (90) days after date of official notice to do so provided that said public sewer is within one hundred (100) feet (30.5 meters) of the dwelling building or private sewage disposal system, whichever is closer except as provided in Section 8-106 (D)

## **Section 8-105 Private Sewage Disposal**

- A.** Where a sanitary or combined sewer is not available under provisions of Section 8-104 (D), the building sewer shall be connected to a private sewage disposal system complying with the provisions of this Section.
- B.** Before commencement of construction of a private sewer disposal system, the owner shall first obtain a written permit signed by the Certified Soil Scientist. The application for such a permit shall be made on a form furnished by the Town, which the applicant shall supplement by any plans, specifications and other information as are deemed needed by the Plumbing Inspector. A permit and current inspection fee shall be paid to the Town at the time the application is filed.
- C.** A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the Plumbing Inspector. He shall be allowed to inspect the work at any stage of construction and in any event, the applicant for the permit shall notify the Plumbing Inspector when the work is ready for final inspection and before any underground portions are covered. The inspection shall be made with-in twenty-four (24) hours of receipt of notice by the Plumbing Inspector.
- D.** The type, capacity, location and layout of a private disposal system shall comply with all recommendations of the Department of Public Health of the State of Maine. No permit shall be issued for any private sewage disposal system employing sub surface soil absorption facilities where the area of the lot is less than 20,000 square feet. No septic tank or cesspool shall be permitted to discharge to any natural outlet.
- E.** Private sewage disposal systems installed prior to the public sewers becoming available are allowed in areas served by the public sewer as long as they are maintained in a sanitary manner and are not in violation of any part of this ordinance. State law, or zoning ordinances of the Town of Winter Harbor. This determination is to be made by the Plumbing Inspector, Code Enforcement Officer or Health Officer. When the private sewage disposal system is no longer functional and must be replaced, and when the property where it is located meets the criteria of Section 8-104(D), then a direct connection shall be made to the public sewer in compliance with this ordinance. Any septic tank, cesspool and similar private sewage disposal system shall be abandoned and filled in with suitable material. All of this to be done at the owner's expense.
- F.** The owner shall operate and maintain the private sewage disposal facility in a sanitary manner at all times at no expense to the Town.
- G.** No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the Health Officer.
- H.** Sewage disposal from travel trailers, boat pumping or septic tank pumping shall be discharged into the Utility District sewer at a time and place to be authorized by the Superintendent.

## **Section 8-106 Building Sewers and Connections**

- A.** No unauthorized person shall uncover, make any connection with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Superintendent.

- B.** There shall be two (2) classes of building sewer permits:
1. For residential and commercial service, and
  2. For service to establishments producing industrial wastes.

In either case, the owner or his agent shall make out an application on a special form furnished by the Utilities District. The permit application shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the Superintendent. A permit and inspection fee will be required for residential, commercial and industrial buildings, sewers and shall be paid to the Utility District at the time the application is filed.

- C.** All costs and expenses incident to the installation and connection of the building sewer shall be born by the owner. The owner shall indemnify the Utility District for any loss or damage that may directly or indirectly be associated by the installation of the building sewer.
- D.** A separate and independent building sewer shall be provided for every building from which wastewater is discharged; except where one building stands in the rear of another on an interior lot and no private sewer is available or can be connected to the rear building through an adjoining alley, court, yard or driveway, the building sewer from the front building may be extended to the rear building.
- E.** Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Superintendent, to meet all requirements of this ordinance.
- F.** The size, slope, alignment, materials of construction of a building sewer and the method to be used in excavating, placing of pipe, jointing, testing, and backfilling of the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the Town. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in the appropriate specifications of the A.S.T.M. and W.P.C.F. Manual of Practice No. 9 shall apply.
- G.** Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.
- H.** No person shall make connection to roof downspouts, exterior foundation drains, areaway drains or other sources of surface runoff or groundwater to a building sewer or building drain, which in turn is connected directly or indirectly to a public sanitary sewer.
- I.** The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the A.S.T.M. and the W.P.C.F. Manual of Practice No. 9. All such connections shall be made gastight and watertight. The Superintendent or his agent before installation must approve any deviation from the prescribed procedures and materials.
- J.** The applicant for the building sewer permit shall notify the Superintendent when the building sewer is ready for inspection and connection to the public sewer. The connections shall be made under the supervision of the Superintendent or his agent.
- K.** All excavation of building sewer installation shall be adequately guarded with barriers and lights so as to protect the public from hazard. Streets, sidewalks,



parkways, and other public property disturbed in the course of the work shall be restored in a matter satisfactory to the Town.

**Section 8-107 Use of the Public Sewer**

- A.** No person shall discharge or cause to be discharged any storm water, surface water, groundwater, roof runoff, subsurface drain, uncontaminated cooling water or unpolluted industrial process waters to any sanitary sewer.
- B.** Storm water and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as storm sewers, or to a natural outlet approved by the Superintendent. Industrial cooling water or unpolluted process waters may be discharged, on approval of the Superintendent, to a storm sewer, or natural outlet.
- C.** No person shall discharge or cause to be discharged any of the following described water or wastes to any public sewers:
  - 1. Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.
  - 2. Any waters or wastes containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to human or animals, create a public nuisance, or create any hazard in the receiving waters of the sewage plant, including but not limited to cyanides, in excess of two (2) mg/l as Cn in the waste waters as discharged to the public sewer.
  - 3. Any waters or wastes having a ph lower than 5.5 or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the sewage works.
  - 4. Solid and viscous substances in quantities of such size capable of causing obstruction to the flow of sewers or other interference with the proper operation of the sewage works such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair, entrails, paper dishes, cups, milk containers, etc, either whole or in part.
- D.** No person shall discharge or cause to be discharged the following described substances, materials, waters or wastes if it appears likely in the opinion of the Superintendent that such wastes can harm either the sewers, sewage treatment process or equipment, have an adverse effect of the receiving stream, or can otherwise endanger life, limb, public property, or constitute a nuisance. In forming his opinion as the acceptability of these wastes, the Superintendent shall give consideration to such factors as the quantity of subject waste in relation to the flows and velocities in the sewage treatment plant, degree of treat ability of wastes in sewage treatment plant and other factors. The substances prohibited are:
  - 1. Any liquid or vapor having a temperature higher than one hundred fifty degrees (150) F (65) C.
  - 2. Any water or waste containing fats, wax, grease or oils, whether emulsified or not, in excess of one hundred (100) mg/l or containing substances which may solidify or become viscous at a temperature

between thirty-two degrees (32) and one hundred fifty degrees (150) F, (0 to 65) C.

3. Any garbage that has not been properly shredded. The installation and operation of any garbage grinding equipment with a motor of three-fourths (3/4) horsepower (0.76 hp metric) or greater shall be subject to the review and approval of the Superintendent.
  4. Any waters or wastes containing strong acid, iron pickling wastes, or concentrated plating solutions whether neutralized or not.
  5. Any water or waste containing iron, chromium, copper, zinc, and similar objectionable or toxic substances; or wastes exerting an excessive chlorine requirement, to such degree that any such material received in composite sewage at the sewage treatment plant exceeds the limits established by the Superintendent for such materials.
  6. Any waters or wastes containing phenols or other taste or odor producing substances, in such concentrations exceeding limits which may be established by the Superintendent as necessary, after treatment of the composite sewage, to meet the requirements of the State, Federal, or other public agencies of jurisdiction for such discharge to the receiving waters.
  7. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Superintendent in compliance with applicable State or Federal regulation.
  8. Any waters or wastes having a pH in excess of 9.5
  9. Materials which exert or cause:
    - a. Unusual concentrations of inert suspended solids (such as, but not limited to, Fullers earth, lime slurries, and residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate).
    - b. Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions).
    - c. Unusual BOD, chemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works.
    - d. Unusual volume of flow or concentration of wastes constituting "slugs" as defined herein
  10. Waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed, or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.
- E.** If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in Section 8-107 (D), and which in the judgment of the Superintendent, may have a deleterious effect upon the sewage works, processes, equipment, or receiving waters, or which otherwise create a hazard to life constitute a public nuisance, the Superintendent may:
1. Reject the wastes,
  2. Require the pretreatment to an acceptable condition for discharge to the public sewers,

3. Require control over the quantities and rates of discharge, and/or,
4. Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of Section 8-107 (J).

If the Superintendent permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the Superintendent, and subject to the requirements of all applicable codes, ordinances and laws.

- F. Grease, oil, and sand interceptors shall be provided when, in the opinion of the Superintendent, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand, or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Superintendent, and shall be located as to be readily and easily accessible for cleaning and inspection.
- G. Where preliminary treatment or flow-equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.
- H. When required by the Superintendent, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. Such manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the Superintendent. The manhole shall be installed by the owner at his expense, and shall be maintained by him so as to be safe and accessible at all times.
- I. All measurements, tests, and analyses of the characteristics or waters and wastes to which reference is made in this ordinance shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association, and shall be determined at the control manhole provided, or upon suitable samples taken at said control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected, Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb, and property. (The particular analyses involved will determine whether a twenty-four (24) hour composite of all outfalls of a premise is appropriate or whether a grab sample or samples should be taken. Normally, but not always, BOD and suspended solids analyses are obtained from twenty-four (24) hour composites of all outfalls whereas pH's are determined from periodic grab samples.)
- J. No statement contained in this section shall be construed as preventing any special agreement or arrangement between the Utility District and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the Utility District for treatment, subject to payment therefore, by the industrial concern.

### **Section 8-108 Protection From Damage**

No unauthorized person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of the sewage works. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct.

### **Section 8-109 Powers and Authority of Inspectors**

- A. The Superintendent and other duly authorized employees of the Utility District bearing proper credentials and identification and by written appointment with the owner or his local Representative shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this ordinance. The Superintendent or his representatives shall have no authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other industries beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterways or facilities for waste treatment.
- B. While performing the necessary work on private properties referred to in 8-109(A) above, the Superintendent or duly authorized employees of the Utility District shall observe all safety rules applicable to the premises established by the owner and the shall be held harmless for injury or death to the Utility District employees and the Utility District shall indemnify the owner; against loss or damage to its property by Utility District employees and against liability claims and demands for personal injury or property damage asserted against the owner and growing out of the gauging and sampling operation, except, as such may be caused by negligence or failure of the owner to maintain safe conditions as required in Section 8-107(H).
- C. The Superintendent and other duly authorized employees of the Utility District bearing proper credentials and identification shall be permitted to enter all private properties through which the Utility holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the sewage works lying within said easement. All entry and subsequent work, if any, of said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

### **Section 8-110 Penalties**

- A. Any person found to be violating any provision of this ordinance except Section 8-108(A) shall be served by the Utility District with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.
- B. Any person who shall continue any violation beyond the time limit provided for in 8-110(A) above, shall be guilty of a misdemeanor, and on conviction thereof shall be fined in the amount not exceeding one hundred (100) dollars for each violation. Each day in which any such violation shall continue shall be deemed a separate offense.

- C. Any person violating any of the provisions of this ordinance shall become liable to the Utility District for any expense, loss, or damage occasioned the Utility District by reason of such violation.

**Section 8-111 Amendments**

This ordinance may be amended by a majority vote of the Legislative Body.

**Section 8-112 Variances**

The Utility District shall be the arbitrator of differences between the Superintendent and sewer users on matters concerning interpretation and execution of the provisions of this ordinance. The cost of arbitration will be divided equally between the Municipality and the sewer user.

**Section 8-113 Validity**

- A. All ordinances or parts of ordinances in conflict herewith are hereby repealed.
- B. The invalidity of any section, clause, sentence, or provision of this ordinance shall not affect the validity of any other part of this ordinance, which can be given effect without such invalid part or parts.

**Section 8-114 Ordinance in Force**


This ordinance shall be in full force and effect from and after its passage, approval, recording, and publication as provided by law.

---

Historical Note: Enacted on May 30, 1975  
Modified and Adopted on June 18, 2014

**Board of Selectmen**

  
\_\_\_\_\_  
Terry D. Bickford

  
\_\_\_\_\_  
Larry D. Smith, Jr.

  
\_\_\_\_\_  
William R. Faulkingham

**SUBDIVISION ORDINANCE  
of the  
TOWN OF WINTER HARBOR, MAINE**

**Adopted on April 16, 2010**

2004 Draft Ordinance Review Schedule:

JUN-OCT: Planning Board meetings/workshops to update Ordinance

19 OCT: Draft Ordinance complete for review process

26 OCT: Planning Board Initial Approval

9 NOV: Initial Public Hearing

16 NOV: Planning Board approves Initial Public Hearing changes

22 NOV: Municipal Attorney comments received

29 NOV: Select Board review

30 NOV: Planning Board meeting to discuss Municipal Attorney comments

06 DEC: Planning Board workshop to make final changes

13 DEC: Select Board Final Review

14 DEC: Second Public Hearing and Special Town Meeting vote

**17 MAR 2010: Draft Ordinance Revisions written**

12 APR 2010: Public Hearing held

16 APR 2010: Special Town Meeting Vote

## TABLE OF CONTENTS

| Page |                                                                   |
|------|-------------------------------------------------------------------|
|      | ARTICLE I. AUTHORITY AND ADMINISTRATION                           |
| 5    | A. Authority                                                      |
| 5    | B. Administration                                                 |
| 5    | C. Separability, Validity, Conflict of Ordinances, Effective Date |
|      | ARTICLE II. PURPOSE                                               |
| 6    | A. Purposes                                                       |
| 6    | B. Planning Board Considerations                                  |
|      | ARTICLE III. DEFINITIONS                                          |
| 8    | Definitions                                                       |
|      | ARTICLE IV. WAIVERS AND EXEMPTIONS                                |
| 17   | A. Waivers                                                        |
| 17   | B. Exemptions                                                     |
|      | ARTICLE V. DESIGN AND PERFORMANCE STANDARDS                       |
| 18   | Required of all Subdivisions                                      |
| 18   | A. Plan Shall Conform to Land Use Regulations                     |
| 18   | B. Relationship to Community                                      |
| 18   | C. Historic Resources and Community Character                     |
| 18   | D. Municipal Facilities                                           |
| 18   | E. Utilities                                                      |
| 19   | F. Disclosure of Subsequent Development Plan                      |
| 19   | G. Homeowners Association                                         |
| 19   | H. Public Rights of Access                                        |
| 19   | I. Land Not Suitable for Development                              |
| 19   | J. Pollution                                                      |
| 20   | K. Soil Erosion and Sediment Control                              |
| 20   | L. Fire Protection                                                |
| 21   | M. Natural and Scenic Features                                    |
| 21   | N. Prominent Ridgelines and Hillsides                             |
| 22   | O. Retention of Open Spaces and Historic Features                 |
| 22   | P. Open Space and Cluster Development                             |
| 24   | Q. Storm Water Management                                         |
| 25   | R. Traffic Conditions                                             |
| 26   | S. Road Standards                                                 |
| 28   | T. Street Standards                                               |
| 33   | U. Lots                                                           |
| 34   | V. Mobile Home Parks                                              |



- 35 W. Vegetative Buffer Strips
- 36 X. Sewage Disposal
- 37 Y. Impact on Municipality's Ability to Dispose of Solid Waste page
- 37 Z. Impact on Ground Water Quality or Quantity

page

- 37 AA. Phosphorus Loading

#### ARTICLE VI. ADMINISTRATIVE PROCEDURE FOR SUBDIVISION REVIEW

- 39 A. Board Meetings
- 39 B. Pre-Application Meeting, Sketch Plan and Site Inspection

#### ARTICLE VII. SUBMISSION OF DOCUMENTS AND REVIEW SCHEDULE

- 41 A. Application, Fees, Deposits
- 43 B. Required Documents
- 45 C. Supporting Documents
- 46 D. Final Approval and Filing
- 47 E. Appeals
- 47 F. Plan Revisions After Approval

#### ARTICLE VIII. INSPECTION, VIOLATIONS, ENFORCEMENT

- 49 A. Inspection of Required Improvements
- 49 B. Required Improvements Not Completed
- 49 C. Modification to Required Improvements
- 49 D. Inspection at End of Construction Season
- 49 E. Survey Required
- 49 F. Certification by a Professional Engineer Required
- 50 G. Utility Services Permits Required
- 50 H. Maintenance Required
- 50 I. Filing of Non-Approved Final Plan Prohibited
- 50 J. Time Limit for Initiation and Completion
- 50 K. Sale Prior to Approval Prohibited
- 50 L. Unauthorized Changes Prohibited
- 50 M. Municipal Remedies
- 51 N. Record of Amendments

## **ARTICLE I. AUTHORITY AND ADMINISTRATION**

### **A. Authority.**

1. This Ordinance has been prepared in accordance with the provisions of Title 30-A, MRSA, Sections 4401:4407 as amended, the Winter Harbor Comprehensive Plan, the Shore Land Zoning Ordinance, the Town Zoning Ordinance and other ordinances adopted by the Town.
2. These standards shall be known and may be cited as "Subdivision Ordinance of the Town of Winter Harbor, Maine".
3. It shall apply to all subdivisions as defined by said Maine Statutes, including residential, commercial and industrial.

### **B. Administration.**

1. The Planning Board of the Town of Winter Harbor, hereinafter called the Board, shall administer these standards.
2. No building permit shall be issued by the Code Enforcement Officer for any use or development within the scope of this Ordinance until an application has been reviewed and approved by the Board and any conditions attached to the approval are fulfilled.
3. This Ordinance may be amended by the legislative body of the Town of Winter Harbor. A public hearing shall be held prior to the adoption of any amendment. Notice of the hearing shall be provided at least thirty days in advance of the hearing.

### **C. Separability, Validity, Conflict of Ordinances and Effective Date.**

1. The invalidity of any section, subsection, paragraph, sentence, clause, phrase or work of this Ordinance shall not be held to invalidate any other section, subsection, paragraph, sentence, clause, phrase, or work of this Ordinance; and to this end the provisions of this Ordinance are hereby declared to be severable.
2. In any case where a provision of this Ordinance is found to be in conflict with a provision of any other ordinance, regulation, or code of the Town of Winter Harbor existing on the effective date of this ordinance, the provision which established the higher standard for the promotion and protection of health, safety and general welfare shall prevail.
3. This Ordinance was adopted on April 16, 2010 by the legislative body of Winter Harbor at a Special Town Meeting.

## ARTICLE II. PURPOSE

### **A. The purpose(s) of this Ordinance are:**

1. To assure that new development in the Town of Winter Harbor meets the goals and conforms to the policies of the Winter Harbor Comprehensive Plan.
2. To protect the environment and conserve the natural and cultural resources identified in the Winter Harbor Comprehensive Plan as important to the community.
3. Providing a process by which the Winter Harbor Planning Board can evaluate the impact of the subdivision as well as providing clear procedures which applicants for subdivision permits shall follow.
4. Establish an administrative review process which will provide the Winter Harbor Planning Board with sufficient evidence, data, and material to carry out its responsibilities as required by 30-A MRSA, Sections 4401:4407 as amended.
5. Assure the safety, health and welfare of the people, to protect the environment and to promote the development of an economically sound and stable community.
6. Assures conformance with the zoning regulations.
7. Provides for drainage, water, sewerage, streets, open space and other improvements to recognize a desirable relation to land form, topography and geology, natural drainage and surface run-off, and to preserve natural assets.

### **B. Planning Board Considerations.**

The Planning Board shall consider the following criteria and before granting approval, shall determine that the proposed subdivision:

- (a) Is in conformance with Winter Harbor Ordinances.
- (b) Is developed by an applicant who has adequate financial and technical capacity to meet the required standards.
- (c) Will not cause a shortage or overtaxing of the municipal water, solid waste disposal, sewage disposal, public safety, or school system.
- (d) Will not have an adverse effect on the scenic or natural beauty of the area, historic sites, significant wildlife habitat, rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.
- (e) Will not result in undue water or air pollution and complies with all applicable state and local health and water resource rules and regulations.
- (f) Or any part of it is in the one hundred (100) year Flood Hazard Boundary based on the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map.
- (g) Will not adversely affect the watershed of any coastal wetland, great pond, river, stream, brook and actual or potential freshwater wetland as defined in 38 M.R.S.A., Section 480-B or any great pond or lake, or within 250 feet of the upland edge of any great pond, river or saltwater body, coastal or freshwater wetland, or within 75 feet of the high water line of a stream.
- (h) Will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.
- (i) Will not cause a long-term cumulative effect substantially increasing a great pond's phosphorus concentration during the construction phase and life of the subdivision.
- (j) Will not create any lots with the greatest dimension more than five (5) times the shortest dimension.

(k) Includes provisions for adequate sewage waste disposal including the nature of soils and sub-soils and their ability to adequately support waste disposal.

(l) Will provide for adequate storm water management, has adequate slope of the land and the effect on water runoff.

(m) Has sufficient water available for the foreseeable needs of the subdivision or will not cause an overtaxing on an existing water supply.

(n) Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

(o) Will not cause congestion or unsafe conditions to existing or proposed highways or public roads.

(p) Will protect and assure access to direct sunlight for solar energy systems on adjoining property.

(q) Will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located.

### ARTICLE III. DEFINITIONS

In general, words and terms used in this Ordinance shall have their customary dictionary meanings. Terms not specifically defined below but defined in Title 30-A MRSA, Section 4401 et seq. as amended shall have the meanings therein stated.

**Acceleration Lane:** a speed-change lane for the purpose of enabling a vehicle entering a roadway to increase its speed to a rate at which it can safely merge with through traffic.

**Access:** the ability to enter or leave a public street or highway from an adjacent driveway or another public street.

**Access Management:** the design and regulatory control of curb cuts and driveways to maintain highway and roadway safety and the traffic carrying capacity of an arterial and major collector road.

**Applicant:** the owner of record, an optionee, or his agent duly authorized in writing.

**Area (rural):** any area in the Town of Winter Harbor not defined as an urban area.

**Area (urban):** all areas within the Town of Winter Harbor and any other area designated on the Comprehensive Plan as Downtown District.

**Average Daily Traffic (ADT):** the average number of vehicles per day that enter and exit the premises to travel over a specific section of road.

**Base:** that portion of the roadway constructed of material on the sub-grade and supporting the surface and pavement.

**Board:** the Town of Winter Harbor Planning Board.

**Board of Appeals:** the administrative review panel. The Board of Appeals shall conduct a hearing, in the case of appeals of subdivision decisions, which shall be purely appellate and shall not be de novo.

**Building Area:** the area designated on a plat within which may be located the principal building and/or house site, including driveways, septic fields, and landscaping.

**Building Site/Building Footprint:** the ground area enclosed by the exterior surfaces of the walls of a building, together with the area of all covered porches and other roofed portions including roofed or open patios and decks.

**Buffer Area:** a part of a property or entire property, which is not built upon and is specifically intended to separate and minimize the effects of a land use activity (e.g. noise, dust, visibility, glare, etc.) on adjacent properties or on sensitive natural resources.

**Capital Improvement Program (CIP):** the municipality's proposed schedule of future projects

listed in order of construction priority together with cost estimates and the anticipated means of financing each project.

**Capital Investment Plan:** the portion of the Comprehensive Plan that identifies the projects for consideration for inclusion within the capital improvements program, together with an estimate of the order of magnitude for the cost of each project.

**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.

**Code Enforcement Officer:** the certified individual charged with enforcing the Town's Zoning Ordinance, State and local Subdivision regulations, and other legal codes under his/her jurisdiction.

**Complete Application:** an application shall be considered complete upon submission of the required fee and all information required by these regulations for a preliminary plan. The Board shall issue a receipt to the applicant upon its determination that an application is complete.

**Comprehensive Plan:** any part or element of the overall plan or policy for development of the Town as defined in Title 30: A MRSA Section 4502.

**Commercial Use:** the use of lands, buildings, or structures, 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.

**Community Open Space:** land not to be developed for building purposes, but to remain permanently available for purposes of recreation, including recreation facilities, and for conservation, including agriculture, for the benefit of the neighborhood community, without buildings, except as incidental accessories to agricultural, forestry, conservation and recreational purposes and maintenance.

**Complete Application:** an application shall be considered complete upon submission of the required fee and all information required by these regulations 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 applicant, 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.

**Construction Drawings:** drawings showing the location, profile, grades, size and type of drains, sewers, water mains, underground power ducts and underground telephone ducts, pavements, cross sections of streets, miscellaneous structures, etc.

**Contiguous Lots:** lots which adjoin at any line or point, or are separated at any point by a body of water less than 15' wide.

**Covered Improvements:** improvements (roads, sidewalks, sewer, and water), storm water control and erosion control.

**Cul-de-sac:** a local street, one end of which is closed and consists of a circular turnaround.

**Cluster or Planned Development:** a residential development in which the minimum lot standards and setback requirements, otherwise required by this Ordinance, are reduced or modified in exchange for the permanent preservation of open space or other common areas; provided that the overall residential density of the development meets the requirements of the zoning district in which the development is located.

**Densely-Developed Area:** any commercial, industrial or compact residential area of 10 or more acres with an existing density of at least one principal structure per 2 acres.

**Driveway:** a vehicular access way serve two dwelling units or less. A vehicular way within a lot.

**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 units in a duplex, apartment house, multi-family dwellings, and residential condominiums.

**Density:** the average area of land required per family of occupancy in the area of the town where located, as described in the municipal plan and more particularly as required by applicable provisions of the zoning bylaw. Density is expressed in acres per dwelling unit, but where less than one (1) acre, units per acres.

**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. For the purposes of these regulations, the watershed boundaries shall be as delineated in the Comprehensive Plan. Due to the scale of the map in the Comprehensive Plan there may be small inaccuracies in the delineation of the watershed boundary. Where there is a dispute as to exact location of a watershed boundary, the board or its designee and the applicant shall conduct an on-site investigation to determine where the drainage divide lies. If the board and the applicant can not agree on the location of the drainage divide based on the on-site investigation, the burden of proof shall lie with the applicant to provide the board with information from a registered land surveyor showing where the drainage divide lies.

**Easement:** the grant by a property owner for the use by another, and for a specified purpose, of any designated part of his property. A right-of-way is a type of easement.

**Engineer:** municipal Engineer or consulting engineer licensed by the State of Maine.

**Fee(s)/deposits:**

a. Non-Refundable Subdivision Application fee: must accompany the application for a subdivision building permit; fifty (\$50.00) dollars for a minor subdivision, five hundred (\$500.00) for a major subdivision.

b. Subdivision Non-Interest Bearing Escrow Account Deposit. A separate account according to acreage. The Planning Board may draw from the escrow account to defer *the town's* costs associated with the proposed subdivision such as consulting engineering fees, inspection fees, attorney fees, etc.

**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.

**Great Pond:** any inland body of water which in a natural state has a surface area in excess of ten (10) acres, and any inland body of water artificially formed or increased which has surface area in excess of thirty (30) 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 soils surveys.

**100-Year Flood:** the highest level of flood that, on the average, has a one percent chance of occurring in any given year. Reference is the Winter Harbor Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map.

**High Water Mark:**

Coastal Waters: the elevation at which vegetation changes from predominantly salt tolerant to predominantly non-salt tolerant, 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 places where vegetation is not present, the high water mark shall be the identifiable debris line left by non-storm tidal action. On a sand dune, the high water mark shall be the mean seaward limit of salt tolerant vegetation.

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.

**Historic Resources:** properties, either singly or in combination as a district, containing one or more structures eligible for listing on the National Register of Historic Places.

**Home Occupation:** an occupation or profession which is carried on or in a detached single-family dwelling unit or accessory structure by the full-time permanent occupant of the dwelling, which is clearly incidental and secondary to the use of the dwelling for residential purposes and which does not change the character thereof (by way of illustration and not of limitation, the term home occupation shall include making foods such as breads, cookies, or preserves, rugs, birdhouses, fishing flies, and quilts). The term "home occupation" shall include both professional and personal services.

**Homeowners Association:** a community association, other than a condominium association, that is organized in a development in which individual owners share common interests and responsibilities for costs and upkeep of common open space, facilities and roads.

**Landscaping:** the addition of lawn, trees, plants, grading and other natural and decorative features to land.

**Legislative Body:** Special or regular Town meeting.

**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.

**Lot:** any separate or distinct unit of land, structure or part of structure, whether residential or non-residential, with a clearly separate but not necessarily different, use or intended use from the lot or lots adjacent to it, with the exception of auxiliary buildings for a single family residence, not intended for human occupancy. Included under this definition of lot would be any multifamily dwelling, apartments, mobile home sites, campsites, trailer sites, recreational vehicle sites, shopping centers, and groups of non-residential buildings with different uses, even if owned by the same person.

**Mobile Home Park:** a parcel of land under unified ownership approved by the municipality for the placement of 3 or more manufactured homes, as defined in 30-A MRSA, Section 4358 (1)(A) as amended.

**Mobile Home Park Lot:** the area of land on which an individual home is situated within a mobile home park and which is reserved for use by the occupants of that home.

**Mobile Home Subdivision or Development:** a parcel of land approved by the municipal reviewing authority under Title 30-A, MRSA, Section 4401 et seq. as amended, for the placement of manufactured houses on individually owned lots.

**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.

**Municipal Engineer:** any registered professional engineer hired or retained by the municipality, either as staff or on a consulting basis.

**Municipality:** Town of Winter Harbor, Maine.

**Net Residential Acreage:** the total acreage available for the subdivision, as shown on the proposed subdivision plan, minus the area for streets or access and the areas that are unsuitable for development.

**Net Residential Density:** the average number of dwelling units per net residential acre.

**Official Map:** the Municipality Property Tax Map showing the location of property, ways used in common by more than two owners of abutting property, and approved subdivisions; and any amendments thereto adopted by the Municipality or additions thereto resulting from the approval of subdivision plans by the Planning Board and the subsequent filing for record of such approved plans.

**Open space:** see Community Open Space

**Person:** includes a firm, association, organization, partnership, trust, company, or corporation, limited liability company as well as an individual.

**Planning Board:** the Winter Harbor Planning Board.

**Pre-existing subdivision:** for the purposes of these regulations a pre-existing subdivision shall be a lot plan filed in the office of the Town Clerk prior to 23 September 1971.

**Preliminary layout:** shall mean the Sketch Plan submitted to the Board for discussion purposes only, sufficiently clear to work out detailed solutions prior to preparing the subdivision plat.

**Principal Structure:** any building or structure in which the main use of the premises takes place.

**Prominent Hillside/Ridgeline:** a ridgeline or hillside which is characterized by an elevation, slope, orientation and/or relationship to nearby property so as to be highly visible from distant vantage points.

**Re-subdivisions:** any change in a recorded subdivision plat or lot plan as discussed in Article VII (F) of this Ordinance.

**Right-of-Way:** all lands or other property interest provided or acquired for the development and operation of a road, which could include drainage and slope easements.

**Road:** a town or state highway, a street of an incorporated village or a road shown on a

subdivision plan approved by the Town of Winter Harbor. The word "road" shall include the entire right-of-way thereof. If no such right-of-way has been surveyed and recorded and is not marked by a fence line or other physical boundary, the right-of-way shall be assumed to be one and one-half rods (24.75 feet) from the center of the traveled way or as described in the land records. The word "road" includes the word "street". Excepted from this definition are rights-of-way serving not more than three (3) family dwelling units or lots, unless the right-of-way is continued beyond the three units or lots to provide future access to adjacent property(s) or lots.

**Roadbed:** general term denoting the foundation and the surface of the road.

**Roadside:** general term denoting the area adjoining the outer edge of the roadway.

**Roadway:** that portion of the highway within the limits of construction, including the travel surface, shoulders and ditches.

**Scenic corridor:** a street or road which is an important scenic asset of the community, the scenic value of which would be impaired by strict adherence to these regulations.

**Screening:** a method of visually shielding or obscuring one abutting or nearby structure or use from another by fencing, walls, berms or densely planted vegetation.

**Shoulders:** that portion of the roadway lying immediately outside of the pavement.

**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:**

Access Street: a street used primarily to give access to abutting properties.

Arterial Street: a major thoroughfare which serves as a major traffic way for travel between and through the municipality. The following roadways shall be considered arterial streets: U.S. Route 186.

Collector Street: a street with average daily traffic of 200 vehicles per day or greater, or streets which serve as feeders to arterial streets, and collectors of traffic from minor streets.

Cul-de-sac: a local street, one end of which is closed and consists of a circular turnaround.

**Industrial or Commercial Street:** streets servicing industrial or commercial uses.

**Minor Residential Street:** a street servicing only residential properties and which has an average daily traffic of less than 200 vehicles per day.

**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.

**Rural Road:** a limited use road, serving an area of low density, which is not up to present town road specifications.

**Steep Slopes:** land characterized by a gradient in excess of 15%.

**Subdivider:** see "Applicant".

**Subdivision:**

(A) the term 'subdivision' means the division of a tract or parcel of land, or of a structure, as defined in 30-A M.R.S.A. 4401(4), as amended. This Ordinance also adopts statute section 4401(4) for clarification of which divisions do not create a subdivision 'lot'.

(B) any application for approval of a planned unit/residential development, including, without limitation, an industrial, residential or resort Planned Unit Development (PUD) shall be reviewed as a subdivision.

**Subdivision Application:** the applicant's plan of subdivision and supporting documents that is presented to the Planning Board for approval and which, if approved, must be filed for record with the Municipal Clerk and County Registry of Deeds and must comply with all requirements of Article V of this Ordinance.

**Subdivision: Minor vs. Major**

**Minor:** the division of any parcel or area of land into three (3) plots or parcels or the alteration, reconfiguration or relocation of existing property lines between existing parcels in a manner which does not result in any additional lots, plots, parcels of land or movement of a town highway.

**Major:** The division of any parcel or area of land into four (4) or more lots, plots or parcels or the alteration, reconfiguration or relocation of existing property lines between existing parcels in a manner which results in any additional lots, plots, parcels of land or movement of a town highway.

**Sub-grade:** that portion of the roadway upon which the base and shoulders are constructed.  
**Surface Treatment:** any bituminous treatment applied on the surfacing course, such as a tarred surface pavement applied at a rate of one gallon per square yard with at least two (2) inches of penetration.

**Surfacing:** that portion of the roadway constructed on the base course to facilitate fine grading and produce good ride ability.

**Subdivision plat:** the final drawing or drawings on which the subdivider's plan of subdivision is indicated, prepared as required under the provisions of this Ordinance which, when approved by the Board, shall meet the current Plat law requirements.

**Thoroughfare, principal:** Any street which serves primarily to carry large volumes of traffic between the town and other communities, or between town and a regional or interstate expressway.

**Thoroughfare, secondary:** any street which serves primarily to carry large volumes of traffic between collector streets and other thoroughfares.

**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 after September 23, 1971.

**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%.

**Waiver:** where the Board makes written findings of fact that due to special circumstances of a particular lot proposed to be subdivided, it may waive the requirement for certain improvements provided that waiving the standard does not rise to the level of a variance.

**Wetlands:** those areas indicated on the current National Wetland Inventory (NWI) maps as digitized on the Winter Harbor Wetlands Map. Also, those areas that are not on the NWI maps but are inundated by surface or groundwater with a frequency sufficient to support vegetation or aquatic life that depend on saturated or seasonally saturated soil conditions for growth and reproduction. Such areas include but are not limited to, marshes, swamps, sloughs, potholes, fens, river and lake overflows, mud flats, bogs and ponds, but excluding such areas upon which food or crops are grown in connection with farming activities.

**Water-Related Terms:**

The following terms have the meanings established in 38 M.R.S.A., Section 436(A) and Section 480(B):

|                        |                              |
|------------------------|------------------------------|
| Coastal Wetlands       | Freshwater Wetlands          |
| River, Stream or Brook | Great Ponds                  |
| Normal High Water Line | Significant Wildlife Habitat |

## **ARTICLE IV. WAIVERS AND EXEMPTIONS.**

### **A. Waivers.**

**1. Waiver of Submission Requirements.** Where the Board makes written findings of fact that there are special circumstances, it may waive portions of the submission requirements provided:

- (a) Performance Standards are not otherwise indicated in the regulations.
- (b) The public health, safety, and welfare are protected.
- (c) The waiver does not have the effect of nullifying the intent and purpose of the Maine Statutes or Winter Harbor Ordinances.

**2. Waiver of Required Improvements.** Where the Board makes written findings of fact that due to special circumstances of a particular lot proposed to be subdivided, it may waive the requirement for certain required improvements provided:

- (a) The waivers do not have the effect of nullifying the intent and purpose of the Comprehensive Plan, the Zoning Ordinance, or these regulations.
- (b) The improvements are not required to provide for the public health, safety or welfare.
- (c) The improvements are inappropriate because of inadequate or lacking connecting facilities adjacent to or in proximity of the proposed subdivision.
- (d) The Board will consult with the Code Enforcement Office prior to granting a waiver.

**3. Board may set Conditions.** Waivers may only be granted in accordance with Article II of this Ordinance. When granting waivers, the Board shall set conditions so that the purposes of these regulations are met.

**4. Waivers shall be shown on Final Plan.** When the Board grants a waiver to any of the required improvements, the Final Plan, to be recorded at the Registry of Deeds within ninety (90) days of plan approval, shall indicate the waivers granted and the date on which they were granted.

### **B. Exemptions.**

**1. Prior Existence Exemption.** This Ordinance does not apply to any subdivision approved by the Planning Board prior to the effective date of this Ordinance (19 OCT 2004). Any further subdivision of a lot or lots of previously approved subdivisions shall require Planning Board approval as an amendment to the original plan.

**2. Waiver of survey requirement.** The Board may, upon applicant's request and for good cause shown, waive the requirement that any lot, plot or parcel retained by the land owner be surveyed, provided the land is used for agricultural or silvaculture purposes. The Board may impose conditions, including requiring that a notice or agreement containing restrictions on such retained land be recorded the Town of Winter Harbor Land Records.

## **ARTICLE V. DESIGN AND PERFORMANCE STANDARDS.**

**Required of all Subdivisions.** The Board shall consider all of the following requirements for each proposed subdivision unless otherwise noted. In all instances, the burden of proof shall be upon the subdivision applicant.

**A. Plan shall conform to Land Use regulations.** Any proposed subdivision shall conform to all applicable State laws and to the Town of Winter Harbor Zoning Ordinances.

**B. Relationship to Community.** Any proposed subdivision shall be reviewed by the Board with respect to its effect upon existing services and facilities. Prior to the approval of a subdivision plat, the subdivider has the responsibility to satisfy the Board that the land can be used for the intended purposes without undue adverse impact on public health or safety, the environment, or the rural and historic character of the community.

**C. Historic Resources and Community Character.** Due regard shall be given to the preservation and enhancement of historic resources and the rural character of the Town. In granting subdivision approval, the Board may require the following:

(1) Subdivisions in or adjacent to existing urban areas, including Winter Harbor Village, and/or designated commercial growth centers, shall be designed to reflect traditional village settlement patterns characterized by an appropriate scale of development, an interconnected street network with development oriented to the streetscape, a mix of land uses and pedestrian access.

(2) Subdivisions in rural areas will result in minimal adverse impact on the rural landscape as characterized by open fields and forested hillsides. Impacts will be minimized through appropriate considerations including but not limited to low density development patterns, clustering and/or screening.

(3) Subdivisions within or adjacent to historic districts or structures shall result in a minimal adverse impact on the historic context of the affected property(s). The scale, location or design of proposed development may be restricted to ensure that new development is consistent and complementary of the historic district or structure.

**D. Municipal Facilities.** A proposed major subdivision will not create an undue burden on municipal facilities or create an unreasonable demand for municipal services. To satisfy this standard, the Board may employ the services of a State Certified Municipal Planner.

**E. Utilities.**

(1) **General requirements.** The applicant shall provide for the Board approval, the size, type and location of all public utilities such as street lights, electricity, telephones, gas lines, fire hydrants, dry hydrants, sewer or septic lines, etc. The Board may require the extension of public water and sewers to and within a proposed subdivision without cost to the town. Utilities shall be installed underground except as otherwise approved by the Board.

**(2) Power and Telecommunications.** Power and telephone lines shall be installed underground. The Board may place restrictions on the location and design of utility transformers, translosures, meter boards and related equipment in order to minimize adverse visual impact. If underground utilities are to be furnished from a public source, all necessary mains, branch offsets to each lot, and fire hydrants shall be installed by the subdivider as approved by the corporation or municipal department having jurisdiction, and to the satisfaction of the Select Board or trustees and without expense to the town.

**(3) Street Lighting.** The Board may require the installation of street lighting in any subdivision in Winter Harbor Village.

**F. Disclosure of Subsequent Development Plans.** Whenever an applicant submits a proposal for development on only a portion of a contiguous parcel, the Board may require a general indication of the intended uses of the remaining portion of land. Such an indication should include access, type of use, intensity of use, and phasing. The Board may require the execution of a Development Agreement between the applicant and Board which ensures the ongoing integration of future development with each phase of subdivision.

**G. Homeowners Association as a Private Enforcement Mechanism.** Pursuant to the Regulations and as a condition of subdivision approval, the Board may require the formation of a Homeowners Association, consisting of the owners of all properties within the subdivision, to ensure that the terms of any protective covenants, conditions or other agreements are monitored and enforced.

**H. Public Rights of Access.** 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 will be included in the open space with provisions made for continued public access and notated on the Final Plan.

**I. Land Not Suitable for Development.** The Board shall not approve such portions of any proposed subdivision that:

(1) Are situated below sea level.

(2) Are located within the Flood Plain as identified by the one hundred (100) year Flood Hazard Boundary based on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps.

(3) Are located on land which must be filled or drained or on land created by diverting a watercourse, except the Board may grant approval if a central sewage collection treatment system is provided. The Board may not approve any part of a subdivision located on filled tidal wetlands or filled or drained Great Ponds.

(4) Employs a septic sewage disposal system and is located on soils rated "poor" or "very poor" by the Soil Suitability Guide for Land Use Planning in Maine. Lots used for on-site sewage disposal shall meet or exceed the lot size guidelines for soil types and slopes as specified in Appendix I of "State of Maine Plumbing Code, Part II, Private Sewerage Disposal Regulations", April 1975, or as amended.



**J. Pollution.**

(1) Discharges of storm water shall be treated to remove oil, grease, and sediment prior to discharge into surface water bodies.

(2) Any proposed subdivision within the Wellhead Protection Zones I or II are subject to the restrictions in the Wellhead Protection Section of the Zoning Ordinance.

(3) Any proposed subdivision shall not result in undue air pollution.

**K. Soil Erosion and Sedimentation control.**

(1) The proposed subdivision shall prevent soil erosion from entering any water body, wetlands, and adjacent properties.

(2) An Erosion and Sedimentation Control Plan shall be implemented during the site preparation, construction, and cleanup stages.

(3) 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.

(4) The Board may require the preparation and implementation of a Sedimentation and Erosion Control Plan to ensure that site improvements, including excavation, road and driveway construction and site clearing and grading, shall not unduly impact neighboring properties or surface waters. Such a plan, if required, shall be prepared by a Registered Maine Engineer. in accordance with the standards contained in the latest revised edition of the Environmental Quality Handbook published by the U. S. Soil Conservation Service for construction and for permanent control or equivalent reference.

**L. Fire Protection Facilities.** To assist the Board in determining the adequacy of fire protection facilities the applicant shall consult with the Winter Harbor Fire Chief. Adequate water storage or distribution facilities for fire protection within the subdivision shall be provided to the satisfaction of the Board and Fire Department. Standards for fire protection include the following:

(1) Fire hydrants connected to a public water supply system shall be located no further than 500 feet from any building.

(2a) 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 or liner upon a recommendation from the Fire Chief. 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.

(2b) Or Home Sprinkler Systems that meet NFPA 13R Standards.

(3) 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 (6) inches.

(4) 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 access way to the hydrant or other water source shall be constructed.

**M. Natural and Scenic Features.** The subdivision will protect the unique visual and environmental character of those areas defined by steep slopes, prominent knolls and ridgelines and significant focal points. Such areas will be retained in a natural state and development will be sited in a manner that does not interrupt or modify natural contour lines and does not create a silhouette against the skyline or mountain backdrop as viewed from important vantage points and principle highways, designated scenic roads, public properties or boating activities. Due regard shall be given to the preservation, protection and enhancement of existing natural features, including: brooks, streams, water bodies, ground water resources and wetlands, important forest resources, aesthetic resources and scenic vistas, significant wildlife habitat; and other natural resource assets of a community nature. In granting subdivision approval, the Board may:

(1) Restrict irregular or elongated lots.

(2) Establish or limit the building site(s) or other improvements to avoid the parcelization, isolation, or destruction of natural features.

(3) Require setbacks from property boundaries or identified natural features greater than specified in the Zoning Ordinance in order to create buffer zones and prevent degradation to significant natural features.

(4) Establish preserve areas where development is restricted or prohibited and specific land management techniques are employed to protect or enhance significant natural features.

(5) Require that the plan shall, by notes on the Final Plan and deed restrictions, limit the clearing of trees to those areas designated on the plan.

(6) Require that the subdivision be designed to minimize the visibility of buildings from existing public roads, except in areas of the municipality designated by the Comprehensive Plan as growth areas.

(7) Require a landscape plan that illustrates the preservation of existing trees larger than 24 inches diameter breast height, the replacement of trees and vegetation, and graded contours.

#### **N. Prominent Ridgelines and Hillides.**

**(1) Identification/Designation of Prominent Ridgelines and Hillides.** In reviewing subdivision proposals, the Board shall determine whether the subject property is characterized by steep slopes, significant exposure and/or visibility, or serves as the background for important scenic views. In making such a determination, the Board may consider appropriate resource

materials, including but not limited to topographic maps, scenic resource inventories, and other relevant information.

**(2) Building Site Limitations.** In reviewing proposed building sites, the Board shall require the following:

(a) No approved building site will result in any building, roof or appurtenant structure being located in a manner which would allow the building, roof or structure to visually exceed the lowest elevation of the identified ridgeline.

(b) No approved building site, by serving as a competing focal point, will detract from existing natural or cultural focal points in the vicinity that are critical to the overall visual quality of the landscape.

(c) No approved building site will inordinately detract from the sense of order or harmony of the landscape formed by the ridgeline or hillside by appearing out of character with its natural surroundings.

#### **O. Retention of Open Spaces and Historic Features.**

**(1) Greenbelts.** 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) Unique Natural Area.** If any portion of the subdivision is located within an area designated as a Unique Natural Area by the Comprehensive Plan or the Maine Exemplary Natural Community Program, the plan shall indicate appropriate measures for the preservation of the values which qualify the site for such designation.

**(3) Historic Site.** If any portion of the subdivision is designated a site of historic or prehistoric importance by the Comprehensive Plan or the Maine Historic Commission, appropriate measures for the protection of the historic or prehistoric resources shall be included in the plan.

**(4) Recreational Space.** The applicant is encouraged to reserve sufficient undeveloped land to provide for the recreational needs of the residents. The percentage of open space to be reserved depends on the identified needs for outdoor recreation in the portion of the municipality in which the subdivision is located according to the Comprehensive Plan, the proposed lot sizes within the subdivision, the expected demographic makeup of the occupants of the subdivision, and the site characteristics. Land reserved for open space purposes will be of a character, configuration and location suitable for the particular use intended.

#### **P. Open Space and Cluster Development.**

**(1) Required community open space.** The Board may, in major subdivisions having lots or potential dwelling sites for four (4) or more family dwelling units, and for all Planned

Residential Developments (PRDs), require that the subdivision plat designate one (1) or more areas of character, size, shape and location suitable to be used as open space, park or playground.

**(2) Open space shown on Comprehensive Plan.** Where a proposed park, playground, or other open space is shown on the municipal plan to be located in whole or in part in a proposed subdivision, the Board shall require substantial compliance with such plan. As condition of approval of the subdivision plat, the Board may require that an area not exceeding fifteen (15) percent of the total area of the subdivision shall be set aside for open space.

**(3) Objectives of open space design.** Whether or not land to be subdivided includes open space shown on the Comprehensive Plan, the following objectives shall be used to guide the design and locations of open space:

(a) Conservation and improvement of natural features and green areas, including areas along roads, the banks of streams, open meadows and ridge tops.

(b) Retention of fish and wildlife refuge areas and nature observation areas, protection of the quality of water bodies.

(c) Protection of natural drainage ways and floodwater retention areas.

(d) Provision, in appropriate areas of population concentration, of areas of land for active recreation use.

**(4) Designation of Open Space.** Unless otherwise provided by the Board, applications for the creation of four (4) or more lots and all PRDs and PUDs shall designate an area for open space on the preliminary layout. The applicant is encouraged to seek guidance from the Board during a pre-application meeting prior to the designation of open space. The Board or staff will advise the applicant regarding the special features to be so designated, as well as an indication of the appropriate protection measures for the perpetual maintenance of open space.

**(5) Adequate controls.** The Final Plan must contain a provision for permanence of open space use in areas so designated, through public access right-of-way, conservation easement or other suitable type of agreement.

**(6) Abutting an existing public space.** When a property line of a subdivision abuts an existing public or community open space, the Board may require the new community open space to form a continuation of the existing open space to provide a single large unified area.

**(7) Access to community open space.** To provide for maintenance and authorized access, community open space shall abut or have direct access to a street through a right-of-way dedicated to such purpose. Such right-of-way shall be not less than twenty (20) feet wide and shall be graded in a manner suitable for traffic of pedestrians and maintenance vehicles.

**(8) Development of open space.** Land to be used as public open space shall be left in condition for the purpose intended. The existing natural characteristics of open space land shall not be altered from its original condition, until a site plan has been approved by the Board.

**(9) Open Space Waiver.** An applicant may request a waiver from the open space requirement in instances where a proposed subdivision is poorly suited for open space design because of unique characteristics of the land or other constraints related to site conditions and if the standard is not required by other ordinance. Such a request shall be submitted to the Board, in writing, together with the application for preliminary layout approval. The request for a waiver shall describe the rationale for not incorporating open space into the subdivision design and shall explain how the proposed layout achieves other standards set forth in these regulations. The Board will determine whether a waiver is warranted and notify the applicant concurrent with the Board's decision to approve, approve with conditions or disapprove the preliminary layout application.

## **Q. Storm Water Management.**

**(1) Management Plan.** The applicant shall submit a plan for the management of storm water generated by the proposed subdivision. Any storm water management plan required under this section shall be evaluated on the USDA NRCS TR20 Hydrologic Model, or the equivalent. Management plans shall be required for all projects within the expanded sewer district. The management plan shall include measures to ensure that no increase in the rate of storm water runoff is generated beyond the boundaries of the project and that existing drainage patterns are not altered in a manner to cause an undue adverse impact on neighboring properties, town highways or surface waters. Plans for handling storm water runoff shall utilize the best available technology to minimize off-site storm water runoff, increase on-site infiltration, encourage natural filtration functions, simulate natural drainage systems and minimize off-site discharge of pollutants to ground and surface water. Best available technology may include measures such as retention basins, recharge trenches, porous paving and piping, contour terraces, and swales.

### **(2) Storm Water Management Design Guidelines.**

(a) The best management practices shall be substantially equivalent to those described in the *Storm Water Management for Maine: Best Management Practices*, published by the Maine Department of Environmental Protection, 1995.

(b) Any subdivision that is traversed by a natural water course, drainage way, channel, or stream requires a storm water easement or drainage right-of-way conforming substantially with the lines of the water course. The construction will assure that no flooding occurs. All natural storm water drainage systems will be not less than thirty (30) feet in width conforming substantially to the lines of existing natural drainage.

(c) The minimum pipe size for any storm drainage pipe shall be 15 inches for driveway entrances and eighteen inches for cross culverts. Maximum trench width at the pipe crown shall be the outside diameter of the pipe plus two feet. Pipe shall be bedded in a fine granular material, containing no stones larger than three inches, lumps of clay, or organic matter, reaching a minimum of six inches below the bottom of the pipe extending to six inches above the top of the pipe.

(d) Catch basins shall be installed where necessary and when located within a street shall be located at the curb line.

### **(3) Storm Drainage Construction Standards.**

#### **Materials.**

(a) Storm drainage pipes shall conform to the requirements of Maine Department of Transportation materials specifications Section 706 for non-metallic pipe and Section 707 for metallic pipe. Plastic (polyethylene) pipes shall not be installed except in closed systems such as street under drains. Bituminous-coated steel pipes shall not be used.

ii. Where the storm drainage pipe is to be covered by ten feet or more of fill material, pipe material with a fifty year life shall be used. These materials include concrete pipe, polymer coated galvanized corrugated steel pipe, polyvinylchloride (PVC) pipe, and corrugated aluminum alloy pipe.

(b) Where storm drainage pipe may come into contact with salt water, corrugated aluminum alloy pipes shall be used. Pipe Gauges:  
Metallic storm drainage pipe shall meet the thickness requirements of Table X.F.1, depending on pipe diameter:

Table X.F.1. Culvert Size and Thicknesses:

Material

Galvanized CMP

Aluminum/Zinc Coated CMP Aluminum Coated CMP

| Inside Diameter | Corrugated Aluminum Alloy | Polymer Coated CMP |
|-----------------|---------------------------|--------------------|
| 15" to 24"      | 14 ga.                    | 16 ga.             |
| 30" to 36"      | 12 ga.                    | 14 ga.             |
| 42" to 54"      | 10 ga.                    | 12 ga.             |
| 60" to 72"      | 8 ga.                     | 10 ga.             |

(c) Drain inlet alignment shall be straight in both horizontal and vertical alignment unless specific approval of a curvilinear drain is obtained in writing from the Board, after consultation with the municipal engineer.

(d) Manholes shall be provided at all changes in vertical or horizontal alignment and at all junctions. On straight runs, manholes shall be placed at a maximum of 400 foot intervals. Upon completion, each catch basin or manhole shall be cleaned of all accumulation of silt, debris or foreign matter and shall be kept clean until final acceptance.

### **R. Traffic Conditions.**

**(1) General traffic provisions required of all subdivisions.** The Final Plan will include provisions for vehicular access to the subdivision and circulation within the subdivision in order to:

(a) Safeguard against hazards to traffic and pedestrians in existing streets and within the subdivision.

(b) Avoid traffic congestion on any street; and provide safe and convenient

circulation on public streets and within the subdivision.

**(2) Required traffic provisions for all major subdivisions.**

(a) 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.

(b) Provisions shall be made for turning lanes, traffic directional islands, frontage roads, sidewalks, bicycle ways and traffic controls within existing public streets.

(c) Access ways to non-residential subdivisions or to multifamily developments shall be designed to avoid queuing of entering vehicles on any street. Left lane storage capacity shall be provided to meet the anticipated demand.

(d) Where topographic and other site conditions allow, provision shall be made for street connections to adjoining lots of similar existing or potential use within areas of the municipality designated as growth areas in the Comprehensive Plan, or in non-residential subdivisions when such access shall be provided if it will facilitate fire protection services (as approved by the Fire Chief) or enable the public to travel between two existing or potential uses, generally open to the public, without need to travel upon a public street.

(e) 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. The developer shall install street names and traffic safety control signs meeting municipal specifications.

(f) Cleanup. Following street construction, the developer or contractor shall conduct a thorough cleanup 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.

**(3) Board may employ a Traffic Specialist.** Traffic generated by the proposed subdivision will not create unreasonable traffic congestion or cause unsafe conditions regarding use of existing roadways. To satisfy this standard, the Board may employ a specialist to prepare a Traffic Impact Study to address all concerns relative to traffic impact and safety.

**(4) Pedestrian Access.** The Board may require a right-of-way to facilitate pedestrian circulation within the subdivision and to ensure access to adjoining properties or uses. Access to and across existing trails, shall be preserved. In areas designated on the Comprehensive Plan as Downtown District or where the Board finds highway traffic conditions to be specifically hazardous to pedestrians, the Board may require rights-of-way or sidewalks for pedestrian travel and access between subdivisions or their parts, such as a school or park or playground. The Board may require the construction of walks in such right-of-way or of sidewalks along streets where it deems it desirable in the interests of public safety and convenience.

## **S. Road Standards.**

**(1) Road Layout.** All proposed roads shall be designed to ensure the safe and efficient movement of vehicles. Roads shall be logically related to topography so as to produce usable lots and reasonable road grades and shall be in harmony with existing and proposed public highways. Wherever extensions of proposed roads could rationally provide public access to adjacent properties or connection to existing public State or Town highways, a right-of-way across the applicant's property may be required, provided just compensation is approved by the Legislative Body.

**(2) Dead-End Roads.** Permanent dead-end roads shall terminate:

- a. In a turnaround not less than one hundred (100) feet in diameter, with a roadway not less than eighty (80) feet in outside diameter.
- b. In a "T" having forty-foot arms measured from each shoulder edge of the road.
- c. Or other types of turnarounds suitable to the topography as approved by the Board.

**(3) Intersection Design.** Roads shall intersect so that within seventy-five (75) feet of the intersection the street lines are at right angles, and the grade does not exceed plus or minus two (2) percent. No structure or planting shall impair corner visibility at intersections.

**(4) Access Roads and Driveways.** Parcels of land to be subdivided, which are located on state or town highways shall have no more than one (1) access road or driveway for the first one thousand (1,000) feet or fraction thereof, of frontage on such state highway and one (1) additional access road or driveway for each additional six hundred (600) feet or fraction thereof of such frontage.

**(5) State approval required.** Maine Department of Transportation will approve access in the case of state highways and the Board of Selectmen in the case of town roads. Access to all lots created by subdivision of any such parcel and to all buildings or other land development located thereon shall be only from such permitted access road or driveway. Lots of other land development located on a subdivision and which abut a state highway or local road shall have access only from interior access roads within such subdivision or from a frontage street adjacent to or near the state highway or local road or from said driveways.

**(6) Public Road Standards.** All proposed roads intended for consideration for acceptance as Town roads shall be built in conformance with the Maine Department of Transportation standards. Acceptance of a private road by the Town is subject to the Legislative body at Annual Town Meeting. Construction of a road(s) to these standards does not insure such acceptance.

**(7) Private Road Standards.** All roads intended to remain as private roads shall be constructed in conformance with the Maine Department of Transportation standards. The Board may modify these standards if the applicant can document that the road, as designed, is readily accessible to emergency response vehicles, is in compliance with other applicable standards and will not pose a threat to public health and safety.



**(8) Designation of Rights-of-Way.** Every subdivision plat shall show the necessary right-of-way for all proposed roads, regardless of whether the proposed road is intended to be accepted by the Town. In the event the road is not intended for acceptance by the Town, the mechanism with which the right-of-way is to be maintained, owned and/or conveyed shall be clearly documented on the Final Plan and in the Association By-laws. In the case of subdivisions requiring construction of new roads, any existing road that provides either frontage to new lots or access to new roads shall meet the minimum standards established in this Article.

**(9) Road does not conform.** The Board will disapprove any subdivision roadway that does not conform to the minimum requirements.

**(10) Scenic Corridor and Scenic Roads.** As a condition to approval of any subdivision plat, the Board may require that any existing street or any town highway, within or bordering such subdivision be designated on such plat as a scenic corridor or scenic road.

**(11) Modification of Road Standards.** The Board may require greater width of right-of-way where the demand of present or future traffic makes it desirable or where topographic conditions create a need for greater width for grading.

**(12) Capacity of Existing Roads.** In situations where a subdivision may require realignment, widening or otherwise increasing the capacity of an existing road, or where the Comprehensive Plan indicates that such improvements may be required in the future, the subdivider may be required to reserve land for future improvements. The subdivider may also be required to fund any or all of the expenses involved with road improvements necessitated by the improvements.

## **T. Street Standards.**

### **(1) Street Approval and Acceptance.**

(a) The board shall not approve any subdivision plan unless the proposed streets are designed in accordance with the specifications contained in these regulations.

(b) Where the applicant proposes improvements within existing public streets, the proposed design and construction details shall be approved in writing by the Road Commissioner or the Maine Department of Transportation, as appropriate.

### **(2) General Standards.**

(a) Proposed streets shall conform, as far as practical, to the Comprehensive Plan prior to the submission of a Preliminary Plan.

(b) All streets in the subdivision shall be so designed that, in the opinion of the Board, they will provide safe vehicular travel while discouraging movement of through traffic.

(c) The arrangement, character, extent, width, grade, and location of all streets shall be considered in their relation to existing or planned streets, to topographical conditions, to public convenience and to safety, and their relation to the proposed use of the land to be served by such streets. Grades of streets shall conform as closely as possible to the original topography.

(d) In the case of dead-end streets, the Board may require the reservation of a twenty (20) foot wide easement in the line of the street to provide continuation of pedestrian traffic or utilities to the next street.

(e) In front of areas designated for commercial use, or where a change to an area designated for commercial use is contemplated by the municipality, the street right-of-way and/or pavement width shall be increased by such amount on each side as may be deemed necessary by the Board to assure the free flow of through traffic without interference by parked or parking vehicles, and to provide adequate and safe parking space for such commercial or business district. In no case shall the street have a right-of-way width less than sixty (60) feet or have less than two twelve (12) foot travel lanes and two four (4) foot parking lanes.

(f) Adequate off-street loading space, suitably surfaced, shall be provided in connection with lots designed for commercial use.

(g) Where a subdivision borders an existing narrow road (below standards) or when the Comprehensive Plan indicates plans for realignment or widening of a road that would require use of some of the land in the subdivision, the applicant shall be required to show areas for widening or realigning such roads on the Final Plan, marked "Reserved for Road Realignment (or Widening) Proposed". It shall be mandatory to indicate such reservation on the Plan when a proposed widening or realignment is shown on the Official Map. Land reserved for such purposes may not satisfy the setback or area requirements of the Zoning Ordinance.

(h) Where a subdivision abuts or contains an existing or proposed arterial street, the Board may require marginal access to streets (streets parallel to arterial street providing access to adjacent lots), reverse frontage (frontage on a street other than the existing or proposed arterial street) with screen planting contained in a non-access reservation along the rear property line, or such other treatments as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.

(i) Subdivisions containing fifteen (15) lots or more shall have at least two street connections with existing public streets, or streets shown on the Official Map if such exists, or streets on an approved Subdivision Plan.

**(3) Access Control.** Curb cuts onto existing public ways shall be minimized to assure traffic safety and reduce turning movements. Whenever practical, vehicular access shall be through a street other than an existing public way. Where a subdivision abuts or contains an existing or proposed arterial street, no residential lot may have vehicular access directly on the arterial street. This requirement shall be noted on the plan and in the deed of any lot with frontage on the arterial street.

**(4) Deed Restriction.** Where a lot has frontage on two or more streets, the access to the lot shall be provided to the lot across the frontage and to the street where there is lesser potential for traffic congestion and for hazards to traffic and pedestrians. This restriction shall appear as a note on the Final Plan and as a deed restriction to the affected lots.

**(5) Traffic Volume Estimate.** 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.

(a) Low Volume Access: An access with 50 vehicles trips per day or less.

(b) Medium Volume Access: Any access with more than 50 vehicle trips per day but less than 200 peak hour vehicle trips per day.

(c) High Volume Access: Peak hour volume of 200 vehicle trips or greater.

**(6) Sight Distances.** Accesses shall be located and designed in profile and grading to provide the required sight distance measured in each direction. Sight distances shall be measured from the driver's seat of a vehicle standing on that portion of the exit with the front of the vehicle a minimum of 10 feet behind the curb line or edge of shoulder, with the height of the eye 3½ feet, to the top of an object 4¼ feet above the pavement. The required sight distances are listed by road width and for various posted speed limits.

(a) Two Lane Roads: A minimum sight distance of ten feet for each mile per hour of posted speed limit shall be maintained or provided.

(b) Vertical Alignment: Access shall be flat enough to prevent the dragging of any vehicle undercarriage. Accesses shall slope upward or downward from the gutter line on a straight slope of 3 percent or less for at least 75 feet. The maximum grade over the entire length shall not exceed 8%.

(c) Low Volume Access.

(i) Skew Angle. Low volume accesses shall be two-way operation and shall intersect the road at an angle as nearly 90 degrees as site conditions permit, but in no case less than 60 degrees.

(ii) Curb Radius. The curb radius shall be between 10 feet and 15 feet, with a preferred radius of 15 feet.

(iii) Access Width. The width of the access shall be between 20 feet and 24 feet, with a preferred width of 20 feet.

(d) Medium Volume Access.

(i) Skew Angle. Medium volume accesses shall be either one-way or two-way operation and shall intersect the road at an angle as nearly 90 degrees as site conditions permit, but in no case less than 60 degrees.

(ii) Curb Radius. Curb radii will vary depending if the access has one-way or two-way operation. On a two-way access the curb radii shall be between 25 feet and 40 feet, with a preferred radius of 30 feet. On one-way access, the curb radii shall be 30 feet for right turns into and out of the site, with a 5-foot radius on the opposite curb.

(iii) Access Width. On a two-way access the width shall be between 24 and 26 feet, with a preferred width of 26 feet, however where truck traffic is anticipated, the width may be no more than 30 feet. On a one-way access the width shall be between 16 feet and 20, with a preferred width of 16 feet.

(iv) Curb Cut Width. On a two-way access the curb cut width shall be between 74 feet and 110 feet with a preferred width of 86 feet. On a one-way access the curb cut width shall be between 46 feet and 70 feet with a preferred width of 51 feet.

(e) High Volume Access.

(i) Skew Angle. High volume access shall intersect the road at an angle as nearly to 90 degrees as site conditions permit, but in no case less than 60 degrees.

(ii) Curb Radius. Without channelization islands for right-turn movements into and out of the site, the curb radii shall be between 30 feet and 50 feet. With channelization islands, the curb radii shall be between 75 feet and 100 feet.

(iii) Curb Cut Width. Without channelization, curb cut width shall be between 106 feet and 162 feet with a preferred width of 154 feet. With channelization, the curb cut width shall be between 196 feet and 262 feet with a preferred width of 254 feet.

Entering and exiting accesses shall be separated by a raised median which shall be between 6 feet and 10 feet in width.

(iv) Medians. Medians separating traffic flows shall be no less than 25 feet in length, with a preferred length of 100 feet. Access widths shall be between 20 feet and 26 feet on each side of the median, with a preferred width of 24 feet. Right turn only lanes established by a channelization island shall be between 16 feet and 20 feet, with a preferred width of 20 feet.

(v) Signage. Traffic control signage shall be erected at the intersection of the access and the street and on medians and channelization islands. Access location and spacing shall be in accordance with the "Standards which Limit the Number of Driveways" in Appendix A of Access Management: Improving the Efficiency of Maine Arterials, Maine Department of Transportation, 1994.

**(7) Sidewalks.** Sidewalks shall be installed where the subdivision abuts or fronts onto a major street and at such locations as the Board may deem necessary.

**(8) Construction Standards.**

All streets in a subdivision shall be designed and constructed to meet the following minimum standards for streets according to their classification as determined by the Select Board and as overseen by the Municipal Road commissioner:

|                                                  |                                                     |
|--------------------------------------------------|-----------------------------------------------------|
| Minimum width                                    | 60' (includes right-of-way)                         |
| Minimum width of travel lane                     | 24'                                                 |
| Minimum Shoulder width (each side)               | 4'                                                  |
| Minimum grade                                    | .5%                                                 |
| Maximum grade                                    | 6%                                                  |
| Maximum grade at intersection                    | 3% within 50 ft. of intersection<br>of intersection |
| Minimum angle of intersection                    | 60 degrees                                          |
| Minimum centerline radii on curves               | 200'                                                |
| Minimum tangent length between<br>reverse curves | 200'                                                |
| Road base (minimum)                              | 18"                                                 |
| Road crown (minimum)                             | 1/4"/1 ft.                                          |
| Bituminous paving                                | 3"                                                  |
| Sidewalks width (minimum where required)         | 4'                                                  |
| Based course (gravel)                            | 8"                                                  |
| Dead-end or cul-de-sac turnaround width          | 100'                                                |
| Length, not more than                            | 1,000'                                              |
| Radii of turnaround at enclosed end of:          |                                                     |
| Property line (minimum)                          | 80'                                                 |
| Pavement (minimum)                               | 65'                                                 |
| Property line radii at intersection              | 10' minimum                                         |
| Curb radii at intersection:                      |                                                     |
| 90 degree intersections                          | 25'                                                 |
| Less than 90 degree intersections                | 30'                                                 |

**(9) Plantings.**

(a) All esplanade or planting strip areas at sides of streets shall receive at least six (6) inches of compacted topsoil (loam) free of stones over one (1) inch in diameter, sod, and clay. Base material shall be removed prior to placement of topsoil.

(b) Planting strips will be seeded with a conservation mix endorsed by the Hancock County Soil and Water Conservation District.

(c) When required by the Planning Board, street trees shall be planted in the esplanade areas of all new streets and when a proposed subdivision street traverses open fields.

(d) Trees of the 1st magnitude (Birch, Beech, Linden, Oak, Pine, Sugar Maple, Basswood) shall be planted at forty to sixty (40-60) foot intervals.

(e) Trees of the 2nd magnitude (Hawthorne, Flowering Crabapple, etc.) may be planted at intervals of less than forty (40) feet.

**(10) Additional requirements.**

(a) Grades. All streets shall conform in general to the terrain and shall not be less than one-half (1/2) of one percent nor more than six (6) percent for all streets, but in no case more than three (3) percent within fifty (50) feet of any intersection. All changes in grade shall be connected by vertical curves of such length and radius as meet with the approval of the Board so that clear visibility shall be provided for a distance of two hundred (200) feet.

**(b) Intersections.**

(i) Intersections of streets shall be at angles as close to ninety (90) degrees as possible and in no case shall two (2) streets intersect at an angle smaller than sixty (60) degrees.

(ii) Where one street approaches another between sixty to ninety (60:90) degrees, the former street should be curved approaching the intersection.

(iii) Cross (four-cornered) street intersections or other important traffic intersections shall be avoided insofar as possible except as shown on the Comprehensive Plan. A distance of at least two hundred (200) feet shall be maintained between center lines of offset intersecting streets.

(iv) Street lines at intersections shall be cut back to provide for curb radii of not less than twenty-five (25) feet for ninety (90) degree intersections and thirty (30) feet for intersections less than ninety (90) degrees.

(v) Street intersections and curves shall be so designed as to permit adequate visibility for both pedestrian and vehicular traffic. That portion of any corner lot which is necessary to allow twenty-five (25) foot sight lines between intersecting streets shall be cleared of all growth (except isolated trees) and obstructions above the level three (3) feet higher than the center line of the street. If directed, ground shall be excavated to achieve visibility.

(vi) A dead-end street or cul-de-sac shall not exceed three thousand (3,000) feet in length and shall be provided to a suitable turnaround at the closed end. When a turning circle is used, it shall have a minimum outside diameter of one hundred (100) feet.

(vii) All streets shall be provided with adequate drainage facilities to provide for the removal of storm water to prevent flooding of the pavement and erosion of adjacent surfaces.

(viii) Side slopes shall not be steeper than three (3) feet horizontal and one (1) foot vertical, graded, loamed (six (6) inches compacted), and seeded as required.

(ix) Streets shall be rough graded to the full width of the right-of-way.

(x) Guard rails shall be installed in all fill areas of five (5) feet or more. Shoulders shall be constructed three (3) feet wider in those areas to accommodate the railing.

(xi) Street curbs and gutters shall be required on all streets defined as urban areas by the Maine State Department of Transportation and shall be required at the discretion of the Planning Board in rural areas.

(xii) Where curb and gutters are not required, stabilized shoulders and proper drainage shall be the responsibility of the applicant in compliance with the requirements herein.

(c) Mobile home parks. In addition to the minimum pavement width, all streets in a mobile home park shall have a cleared area (no vegetation or appurtenances over three feet high) of 40 feet within the right-of-way to provide for maneuvering of mobile homes.

## U. Lots.

### (1) General.

(a) The lot size, width, depth, shape and orientation and the minimum building setback lines from streets, sidelines, or boundaries shall be consistent with all state statutes and Town of Winter Harbor ordinances and for the type of development and use contemplated.

(b) Depth and width of properties reserved or laid out for any purpose shall be adequate to provide for off-street parking and service facilities for vehicles required by the type of use and development contemplated.

(c) All lots shall have a minimum frontage of 100 feet on a public or private street abutting or within a subdivision unless stricter standards are required by other town ordinances.

(d) Side lot lines shall be substantially at right angles or radial to street lines.

(e) Where a tract is subdivided into lots substantially larger than the minimum size required herein, the Board may require that streets and lots be laid out so as to permit future re-subdivision in accordance with the requirements contained in these standards.

(f) All corners of individual lots shall be marked with iron stakes, granite or concrete markers.

(g) The greatest dimension of the lot shall not be more than five (5) times the shorter dimension.

**(2) Building Area.** The Board will determine that the proposed subdivision provides adequate building sites for each proposed lot. Such sites may be restricted to a specific building area, to be depicted on the plat, located and sized to ensure compliance with all of the provisions of these regulations.

**(3) Screening and Landscaping.** The Board may require the planting or preservation of trees or other vegetation to provide visual screening of development or to otherwise soften and/or lessen the impact of development on natural features and scenic vistas. Street trees along public or private roadways may also be required in order to establish a canopy effect where the Board deems it appropriate. The size, type, or location of such trees shall depend on the particular land parcel. Stripped topsoil shall not be removed from the subdivision area unless specifically approved by the Board.

**(4) Noise pollution.** The subdivision design shall minimize the possibility of noise pollution either from within or without the development (from highway or industrial sources) by providing and maintaining a green strip at least 20 feet wide between abutting endangered properties.

**(5) Markings.** Markers shall be placed on all subdivided parcels in conformance with the Rules of the Board of Land Surveyors, Part 5: *Standards for the Practice of Land Surveying*.

(a) Permanent monuments shall be set at all corners and angle points of the subdivision boundaries; and at all street intersections and points of curvature.

(b) Monuments shall be iron stakes with surveying caps, granite or concrete markers located in the ground at final grade level, and indicated on the Final Plan.

(c) All corners of individual lots shall be marked with iron stakes, granite or concrete markers.

**(6) Forest Cover and Screening.** The Board shall consider the existing vegetation on properties and may require that:

(a) Clearing and forest management within areas defined as ridgelines are restricted to protect the unbroken forested backdrop. Generally, forest management will be limited to practices which maintain a continuous canopy.

(b) On wooded sites, existing forest cover will be maintained adjacent to proposed building sites to interrupt the facade of buildings, provide a forested backdrop to buildings and/or soften the visual impact of new development from distant vantage points. The Board may also place limitations on the amount and location of clearing adjacent to house sites.

(c) On parcels characterized by meadows, or that have been cleared prior to subdivision, additional landscaping may be required immediately adjacent to proposed building sites to interrupt the facade of buildings, provide a forested backdrop to buildings and/or soften the visual impact of new development from distant vantage points.

(d) A plan for the maintenance of all existing and proposed trees be prepared and submitted for review. Such a plan shall address specific measures to be taken to ensure the survival, and if necessary replacement, of designated trees during and after the construction and/or installation of all site improvements

**(7) Water Supply.** Any lots within the Wellhead Protection Zones I or II are subject to the restrictions in the Wellhead Protection Section of the Zoning Ordinance.

## **V. Mobile Home Parks.**

**(1) Minimum Requirements.** Mobile home park lots shall conform to the minimum requirements of municipal ordinances and shall meet the requirement of the subdivision law. A lot in a mobile home park shall meet the following lot size, width, and density requirements as follows:

(a) A mobile home lot served by public sewer: 8,000 square feet.

(b) A mobile home lot served by central on-site subsurface waste water disposal systems. Must meet both (a) and (b).

(a) 12,000 square feet per individual lot.

(b) The overall density of a mobile home park served by a central

subsurface sewage disposal system shall be no greater than one mobile home for every 20,000 square feet of total park area.

(c) A mobile home lot with on-site subsurface disposal: 20,000 square feet.

**(2) Lots within Shoreland Zoning District.** Lots within a Shoreland Zoning District shall meet the lot area, lot width, setback, and shore frontage requirements for that district.

**W. Vegetative Buffer Strips.** Individual lot owners shall be required to maintain buffer areas on their individual lots in accordance with the following standards that must be specified in recorded deed restrictions and as notes on the Final Plan. Where a vegetative buffer strip is to be owned in common by property owners in the subdivision, documentation establishing the Owners Association shall include the following standards:

**(1) No Disturbance Wooded Buffers.** Maintenance and use provisions for wooded buffer strips which are located on Hydrologic Soil Group "D" soils and within 250 feet of the great pond or a tributary, or which are located on slopes over 20% shall include the following:

(a) Buffers shall be inspected annually for evidence of erosion or concentrated flows through or around the buffer. All eroded areas must be seeded and mulched. A shallow stone trench must be installed as a level spreader to distribute flows evenly in any area showing concentrated flows.

(b) All existing undergrowth (vegetation less than four feet high), forest floor duff layer, and leaf litter must remain undisturbed and intact, except that one winding walking path, no wider than six feet, is allowed through the buffer. This path shall not be a straight line to the great pond or tributary and shall remain stabilized.

(c) Pruning of live tree branches that do not exceed twelve feet above the ground level is permitted provided that at least the top two-thirds of the tree canopy are maintained.

(d) No cutting is allowed of trees except for normal maintenance of dead, windblown, or damaged trees.

(e) Buffers shall not be used for all-terrain vehicle or vehicular traffic.

**(2) Limited Disturbance Wooded Buffers.** Maintenance and use provisions for other buffer strips may include the following:

(a) There shall be no cleared openings. An evenly distributed stand of trees and other vegetation shall be maintained.

(b) Activity within the buffer shall be conducted to minimize disturbance of existing forest floor, leaf litter and vegetation less than four feet in height. Where the existing ground cover is disturbed and results in exposed mineral soil, that area shall be immediately stabilized to avoid soil erosion.

(c) Removal of vegetation less than four foot in height is limited to that necessary to create a winding foot path no wider than six feet. This path shall not be a straight line to the great pond or a tributary. The path must remain stabilized.

(d) Pruning of live tree branches that do not exceed 12 feet in height above the ground level is permitted provided that at least the top two-thirds of the tree canopy are maintained.

(e) Where the removal of storm-damaged, diseased, unsafe, or dead trees results in a cleared opening, those openings shall be replanted with native trees at least three feet in



height unless existing new tree growth is present.

(f) Buffers shall not be used for all terrain vehicle or vehicular traffic.

**(3) Non-wooded Buffers.**

(a) Non-wooded buffers may be allowed to revert or to be planted to forest, in which case the standards above shall apply.

(b) A buffer must maintain a dense, complete and vigorous cover of “non-lawn” vegetation which shall be mowed no more than once a year. Vegetation may include grass, other herbaceous species, shrubs and trees.

(c) Activity within the buffer shall be conducted so as to prevent damage to vegetation and exposure of mineral soil. Burning vegetation shall be prohibited.

(d) Buffers shall not be used for all-terrain vehicles or other vehicular traffic.

**X. Sewage Disposal.**

(1) The Final Plan shall include a private subsurface waste water disposal system(s) or a private treatment facility with surface discharge or indicate connections to the municipal sewer system. Test pits must be shown on the Final Plan.

(2) 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.

(3) 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.

(4) 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.

(5) No approval shall be granted to a disposal area located on a site which requires a New System Variance from the Subsurface Wastewater Disposal Rules.

**Y. 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.

**Z. Impact on Ground Water Quality or Quantity. (Required for a Major Subdivision only).**

**(1) Hydro-geologic Assessment.** When a Hydro-geologic 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) Data on the existing ground water quality, either from test wells in the subdivision or from existing wells on neighboring properties.

(e) An analysis and evaluation of the effect of the subdivision on ground water resources. In the case of residential developments, the evaluation shall, at a minimum, include a projection of post development nitrate-nitrogen concentrations at any wells within the subdivision, or at the subdivision boundaries; or at a distance of 1,000 feet from potential contamination sources, whichever is a shortest distance.

(f) 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) Ground water quality.** Projections of ground water quality shall be based on the assumption of drought conditions (assuming 60% of annual average precipitation).

**(3) Ground Water Quantity.** Ground water withdrawals by a proposed subdivision shall not lower the water table beyond the boundaries of the subdivision. 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

**(4) Contaminants.** No subdivision shall increase any contaminant concentration in the ground water. 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. 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.

**(5) Surface Wastewater.** 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.

#### **AA. Phosphorus Loading.**

**(1) Phosphorus Impacts on Great Ponds.** Any subdivision within the watershed of a great pond shall limit its post development phosphorus export to the current standards. The Board shall keep an accurate record of permits issued and shall notify the Comprehensive Planning Committee of the actual development rates at five year intervals, or as the Comprehensive Plan is revised.

**(2) Simplified Phosphorus Review.** The simplified review may be used for:

- (a) A proposed minor subdivision with less than 200 feet of new or upgraded street with a cumulated driveway length not to exceed 450 feet.
- (b) A proposed minor subdivision with no new or upgraded streets with a cumulative driveway length not to exceed 950 feet.
- (c) A proposed minor subdivision consisting of multifamily dwellings that have less than 20,000 square feet of disturbed area including building parking, driveway, lawn,

subsurface waste water disposal systems, and infiltration areas, and new or upgraded streets not exceeding 200 linear feet.

(d) A proposed minor subdivision which creates lots which could be further divided resulting in four (4) or more lots shall be subject to the standard review procedures unless there are deed restrictions prohibiting future divisions of the lots.

**(3) Standard Phosphorus Review. This section applies to all major subdivisions and those minor subdivisions which do not qualify for the simplified review.**

(a) Phosphorus export from a proposed development shall be calculated according to the procedures in *Phosphorus Control in Lake Watersheds: A Technical Guide for Evaluating New Development*, published by the Maine Department of Environmental Protection, revised September 1992. When a proposed subdivision creates lots which are more than twice the required minimum lot size and there are no deed restrictions proposed to prohibit future divisions, the applicant shall either calculate phosphorus loading based on the maximum feasible number of lots, and shall design controls to limit the resulting phosphorus loading.

(b) Maintenance and Use Restrictions for Phosphorus Control Measures. Provisions for monitoring, inspections, and maintenance of phosphorus control measures shall be included in the application.

(c) Infiltration Systems. Individual lot owners shall be responsible for maintenance of individual infiltration systems according to the standards specified in *Phosphorus Control in Lake Watersheds: A Technical Guide for Evaluating New Development*, published by the Maine Department of Environmental Protection, revised September 1992. Requirements for maintenance shall be included in deed restrictions and as notes upon the plan. As an alternative to maintenance by individual lot owners, the applicant may designate some other entity to be contracted to take the responsibility, and shall include the above referenced maintenance provisions in any contractual agreement. Where infiltration systems serve more than one lot, the Owners Association shall be responsible for the maintenance as referenced in the Association bylaws.

## **ARTICLE VI. ADMINISTRATIVE PROCEDURE FOR SUBDIVISION REVIEW**

**A. Board Meetings.** In order to establish an orderly, equitable and expeditious procedure for reviewing subdivisions and to avoid unnecessary delays in processing applications for subdivision review, the Board shall prepare a written agenda for each regularly scheduled meeting. The agenda shall be prepared no less than one week in advance of the meeting, distributed to the Board members and any applicants appearing on the agenda, and posted at the municipal office. Subdivision applicants shall request to be placed on the Board's agenda at least 14 days in advance of a regularly scheduled meeting by contacting the Chairperson or Town Manager. Subdivision applicants who attend a meeting but who are not on the Board's agenda may be heard only after all agenda items have been completed, and then only by a majority of the Board. The Board shall take no action on any application not appearing on the written agenda.

### **B. Pre-application Meeting, Sketch Plan and Site Inspection**

**(1) Purpose.** The purpose of the pre-application meeting and on-site inspection is for the applicant to present general information regarding the proposed subdivision to the Board and receive the Board's comments prior to the expenditure of substantial sums of money on surveying, soils identification, and engineering.

#### **(2) Procedure.**

(a) The applicant shall present the Pre-application Sketch Plan and make a verbal presentation regarding the site and the proposed subdivision.

(b) Following the applicant's presentation, the Board may ask questions and make recommendations to be incorporated by the applicant into the application.

(c) The date of the on-site inspection is selected.

(d) The Pre-application 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 does not have to be engineered and may be a freehand penciled sketch, should be supplemented with general information to describe or outline the existing conditions of the site and the proposed development. Site conditions such as steep slopes, wet areas and vegetative cover will 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:

(i) 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.

(ii) A copy of that portion of the county soil survey covering the proposed subdivision, showing the outline of the proposed subdivision.

(iii). For subdivisions of ten units or more in the Rural or Residential Districts, as defined by Winter Harbor's Zoning Ordinance, a sketch showing how the subdivision could be developed as a cluster and as a conventional subdivision.

**(3) Contour Interval and On-Site Inspection.** Within thirty (30) days of the pre-application meeting, the Board shall hold a public on-site inspection of the property and inform *both* the applicant in writing of the required contour interval on the Preliminary Plan and post a public meeting notice. 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 not conduct on-site inspections when there is more than one foot of snow on the ground.

**(4) Rights not vested.** The pre-application meeting, the 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.

**(5) Establishment of a file.** Following the pre-application meeting the Board shall establish a file for the proposed subdivision. All correspondence and submissions regarding the pre-application meeting and application shall be maintained in the file.

## **ARTICLE VII. SUBMISSION OF DOCUMENTS AND REVIEW SCHEDULE**

### **A. Application.**

**(1) Submission.** Within six months after the on-site inspection by the board, the applicant shall submit an application for subdivision approval at least fourteen (14) days prior to a scheduled meeting of the board. Applications shall be submitted by mail or delivered by hand to the Town Office who shall forward it immediately to the Chairperson of the Planning Board who shall issue to the applicant a dated receipt. Failure to submit an application within six months shall require resubmission of the Sketch Plan to the Board. The Preliminary Plan shall approximate the layout shown on the Sketch Plan, plus any recommendations made by the board.

### **(2) Fees.**

**(a) Non-refundable Subdivision Permit Application Fee.** Every application for a minor subdivision permit shall be accompanied by an application fee of fifty dollars (\$50) to be paid by a check made payable to the Town of Winter Harbor. Every application for a major subdivision permit shall be accompanied by an application fee of five hundred dollars (\$500) to be paid by a check made payable to the Town of Winter Harbor.

**(b) Subdivision Non-Interest Bearing Escrow Account Deposit.** Every application for a subdivision permit shall also be accompanied by the payment of one hundred dollars (\$100) for each acre or fraction of an acre. Measurement will be based upon the Municipal Tax Map or boundary survey, whichever is more current. The checks shall be made payable to the Town of Winter Harbor stating the purpose of the deposit. The Town Treasurer shall deposit the monies in a Non-Interest Bearing Escrow Account separate from any and all other municipal accounts. The account will be used to defer costs directly related to the efforts of the Planning Board and Municipal Officers to assure that the subdivision complies with these regulations, 30-A MRSA, Section 4404 as amended, and the ordinances of the Town of Winter Harbor. Such services may include, but are not limited to; clerical costs, consulting engineering fees, attorney fees, recording fees, and appraisal fees. The Town Treasurer will provide an account of the Subdivision Non-interest Bearing Escrow Account to the applicant upon request.

**(c) Refunds.** If an applicant withdraws the subdivision application within 30 days of initial application date, the Town shall refund all remaining monies in the Subdivision Non-Interest Bearing Escrow Account. Upon a written request from the applicant the Town Treasurer shall refund all of the remaining monies in the account after payment of all costs and services related to the subdivision and upon the subdivision application denial or if approved, upon the subdivision's completion and compliance with all the terms of these regulations, ordinances of the Town of Winter Harbor and conditions of approval of the subdivision. The refund shall be accompanied by a final accounting by the Town Treasurer.

**(3) Notification to Applicant.** Within thirty (30) days from the date of application receipt, the Planning Board shall notify the applicant in writing either that the application is complete or, if the application is incomplete, the specific additional material needed to make a complete application. Note: Determination by the Planning Board that the application is complete in no way commits or binds the Planning Board as to the adequacy of the application to meet the criteria of 30-A MRSA, Section 4404 as amended, or the Winter Harbor Ordinance. The Planning Board shall make a determination as to the completeness of the application only once. The application is deemed “pending” after the Board determines that the application is complete so that it may commence its review of the project. The applicant assumes all risks as to its completeness for all subsequent applications.

**(4) Notification to Abutters and Others Required.** Upon receiving an application, the Planning Board shall notify in writing all abutting property owners and other property owners within five hundred (500) feet of the boundaries of the proposed subdivision, the Town Clerk and the reviewing authority of municipalities that abut or include any portion of the proposed subdivision. The Board will notify the Winter Harbor Select Board, Fire Chief, Code Enforcement Officer, Superintendent of Schools, local newspapers and other parties as necessary. The notice shall specify the location of the proposed subdivision and shall include a general description and site location map of the project.

**(5) Public Hearing Required.** Within thirty (30) days of the notice of the receipt of the complete application, the Planning Board will determine when it will hold a public hearing on an application. The Board shall consider the size and type of subdivision, community impact, as well as written requests for input to the public hearing. The Board shall post the date, time and place of the hearing and provide the details to the applicant and all parties receiving the notice of proposed subdivision.

**(6) Requests for Additional Information.** Prior to its final decision, the Planning Board may require the applicant to submit the written evidence that the Municipal Officers are satisfied with the legal sufficiency of the documents regarding the land to be offered for conveyance to the Town. Such written evidence shall not constitute an acceptance by the Municipality of any public open space or other land.

**(7) Decision.** The Planning Board shall, within thirty (30) days of a public hearing or within such other time limits as may be otherwise mutually agreed to between the applicant and the Planning Board, issue an order denying or granting approval upon such terms and conditions as it may deem advisable to satisfy the criteria in Article II and other parts of this Ordinance, and other requirements of the ordinances and Comprehensive Plan of the Town of Winter Harbor. The Board may however, extend this decision for thirty (30) days in order to obtain an outside expert opinion or other circumstance as required.

**(8) Written Findings of Fact.** In issuing its decision, the Planning Board shall make written findings of fact within ten (10) days, establishing that the proposed subdivision does or does not meet the criteria of 30-A M.R.S.A., Section 4404 (Review Criteria), the ordinances and Comprehensive Plan of the Town of Winter Harbor. In all instances, the burden of proof, persuasion and production of documents and data shall be upon the applicant. If the initial approval or any subsequent amendment of the subdivision is based in part on the granting of a

variance from a subdivision standard, that fact must be expressly noted on the face of the Final Plan to be recorded (30-A M.R.S.A., Section 4406, Subsection 1, Paragraph B.)

**B. Required Documents.** The applicant and all other parties shall submit seven (7) copies of all documents, maps and other written or printed material.

**(1) Location Map.** Location Map to be drawn at a scale of not over four hundred (400) feet to the inch to show the relationship of the proposed subdivision to the adjacent properties and to the general surrounding area and which shall show at least all the area within two thousand (2,000) feet of any property line of the proposed subdivision. The Location Map shall show:

(a) The name, registration number and seal of the land surveyor, architect, engineer or planning consultant who prepared the maps and other documents.

(b) Date, magnetic north point, graphic scale and grid points.

(c) All existing and proposed approximate property lines together with the names and mailing addresses of all owners of land on record for any property within one thousand (1000) feet of the boundaries of the proposed subdivision.

(d) Locations, widths, and names of existing filed or proposed streets, easements, and rights-of-way.

(e) The boundaries and designations of zoning districts and parks or other public lands.

(f) The location and property lines of all land to which the applicant has any title, right or interest in addition to the proposed subdivision, an indication of the future probable street system of the applicant's entire holding, gravel pits and other existing excavations, and the sites of any future sources of gravel or fill.

(g) The location of all surface water bodies, fresh water wetlands regardless of size, coastal wetlands, rivers, streams, brooks, natural drainage ways and culverts within or abutting the subdivision, which shall be identified with arrows indicating direction of flow; wooded and open space areas; registered farm lands, and existing buildings, utility lines, hydrants, fire ponds and dry hydrants, water and sewer lines. If any portion of the proposed subdivision is located in the direct watershed of a great pond, the application shall indicate which great pond.

(h) The location of sensitive areas including identified gravel and bedrock groundwater aquifers and recharge areas; the watershed boundaries of potable water supplies; the one hundred year floodplain as identified by the U.S. Department of Housing and Urban Development Flood Plain Insurance Program; slopes greater than fifteen (15) percent; highly erodible soils; non-discharge soils as defined by the State Plumbing Code; fragile or irreplaceable natural areas; historic and archaeological sites; areas of scenic and natural beauty; areas of significant wildlife habitat as identified by the Department of Inland Fisheries and Wildlife or the municipality.

**(2) Final Plan.** The Final Plan shall be submitted in maps, drawings, overlays, or other documents with all dimensions shown in feet or decimals of a foot, drawn to a scale of one inch equals not more than one hundred (100) feet showing or accompanied by the following information:

(a) Proposed subdivision name or identifying title and the name of the municipality plus the assessor's map and lot numbers.

(b) Name and address of record owner of the subdivision and the applicant if different.



(c) Name, registration number and seal of the land surveyor, architect, engineer or planning consultant who prepared the plan and date the plan was prepared.

(d) Number of acres within the proposed subdivision, date, magnetic north point, grid points and graphic scale.

(e) Contour map of the subdivision drawn with contour lines at intervals of not more than twenty (20) feet based on the United States Geological Survey datum or other data of existing grades.

(f) Proposed lot lines with approximate dimensions and locations of buildings.

(g) Location of the lot survey corner markers adequate to enable the Board to locate readily and evaluate the basic layout in the field.

(h) All parcels of land proposed to be dedicated to public use or to be commonly owned by the purchasers of land in the subdivision and the conditions of such dedication.

(i) Names and addresses of all owners of land on record for any property within 1,000 feet of subdivision boundaries.

(j) Location of existing buildings; natural features including ponds, streams, rivers, natural drainage ways within or abutting the subdivision; coastal wetlands; freshwater wetlands regardless of size; wooded and open space areas; ledges; rock outcroppings and gravel pits; other existing excavations and the sites of any future sources of gravel or fill within the subdivision.

(k) Location of sensitive areas including identified gravel and bedrock aquifers and recharge areas; the watershed boundaries of potable water supplies; the one hundred year flood plain as identified by the U.S. Department of Housing and Urban Development Flood Insurance Program; slopes greater than fifteen (15) percent; highly erodible soils; non-discharge soils as defined by the State Plumbing Code; fragile or irreplaceable natural areas; historic and archaeological sites; areas of scenic or natural beauty; and areas of significant wildlife habitat as identified by the Department of Inland Fisheries and Wildlife, the municipality, or the Comprehensive Plan.

(l) Soils report and high intensity soils survey prepared and signed by a soils scientist, identifying the soils names and soils boundaries in the proposed development. There shall be at least one soil test per lot.

(m) Location, names and widths, and ownership of existing and proposed streets, highways, easements and rights-of-way, including grades and street profiles of all streets or other public ways proposed by the applicant.

(n) Location and size of any existing water lines, sewer lines, utility lines, hydrants, fire ponds, culverts and drains on the property to be subdivided.

(o) Location of all proposed on-site sewage disposal systems and/or proposed sewer lines, their profile and all easements for the necessary systems.

(p) Location of all proposed water lines, wells, reservoirs or other facilities.

(q) Provisions for collecting and treating storm drainage waters in the form of a Drainage Plan prepared by a State of Maine Registered Professional Engineer in accordance with the latest revised edition of Technical Release 55, Urban Hydrology for Small Watersheds, published by the U. S. Soil Conservation Service, which includes all proposed facilities, such as culverts, catch basins, and detention or infiltration basins.

(r) Indication of the sections of the subdivision and the dates of their phased construction, if the subdivision is to be constructed over a period of more than two years.

(s) A list of construction items with cost estimates that will be completed by the developer prior to the sale of lots and evidence that the applicant has financial commitments or

resources to cover these costs. A separate list of construction and maintenance items that may be required by the development, with both capital and annual operating cost estimates, that may be financed by the municipality, which shall include, but not be limited to:

- Schools, including busing
- Road maintenance and snow removal
- Police and fire protection
- Solid waste disposal
- Sewer system
- Recreation facilities
- Storm water management facilities

(t) The developer shall provide an estimate of the net increase in taxable assessed valuation at the completion of the construction of the subdivision.

(u) The location and method of disposal from land clearing and demolition debris.

### **C. Supporting Documents.**

**(1) Proposed covenants, easements, restrictions.** The Planning Board may request as a condition of approval and prior to its decision that the applicant submit for review and approval copies of all proposed deeds; leases; restrictive covenants; easements; landowner association agreements and corporate papers; contracts; any documents, existing or proposed, which may determine or affect the land and the uses of the land in the subdivision; deeds to commonly held land; deeds and covenants to land to be held by the applicant; deeds offering to convey land to the Town of Winter Harbor, or its agencies; or to the State of Maine, its agencies or departments; or to Hancock County or any other public body; or to any private organization or corporation.

**(2) Adequate Financial and Technical Capacity.** Evidence must be provided showing that the applicant has adequate financial and technical capacity to meet the requirements of 30-A MRSA, Section 4404 as amended, and the Town of Winter Harbor ordinances and Comprehensive Plan. The applicant shall also provide evidence of financial and technical capability for the adequate operation and maintenance of all private multiple system waste disposal and storm drainage facilities. The applicant may submit any additional plans, maps, documents, evidence, or data that he/she may consider relevant to the application. In making its determination, the Board may hire consulting engineers or other technical experts.

**(3) Guarantee, Security, or Performance Bond.** The Board may require as a condition of approval that the applicant file with the Board at the time of approval and prior to any construction a performance guarantee in an amount sufficient to defray all expenses of the proposed improvements taking into account the time span of the construction schedule and the inflation rate for construction costs, including but not limited to streets, sidewalks, utilities, storm drains, landscaping, and publicly held open space. The performance guarantee shall contain a construction schedule, cost estimates for each major phase of construction taking into account inflation, construction delays provisions for inspections of each phase of construction, provisions for the release of part or all of the performance guarantee to the developer, and a date after which the applicant will be in default and the municipality shall have access to the funds to finish construction. The conditions and amount of the performance guarantee shall be determined by the Board with the advice of a municipal engineer, road builder, municipal officers, and/or municipal attorney. The Board will accept one or more of the following forms of guarantees:

(A) A performance bond payable to the Municipality issued by a surety company, approved by the Municipal Officers. A performance bond shall detail the conditions of the bond, the method for release of the bond or portions of the bond to the applicant, and the procedures for collection by the municipality. The bond documents shall specifically reference the subdivision for which approval is sought and stay in effect over the life of the project.

(B) An irrevocable letter of credit from a financial institution establishing funding for the construction of the subdivision, from which the Municipality may draw if construction is inadequate, approved by the Municipal Officers. An irrevocable letter of credit from a bank or other lending institution shall indicate that funds have been set aside for the construction of the subdivision and may not be used for any other project or loan.

(C) A conditional agreement recorded at the Registry of Deeds that limit the number of units built or lots sold until all required improvements have been constructed.

**D. Final Approval and Filing.**

(1) **Majority Board vote required.** Upon completion of the requirements of this Ordinance, documentation through a written Findings of Fact and with an approved vote by the majority of the Planning Board members present, but no less than a quorum of three (3) members, and a notation to that effect upon the Final Plan, the Subdivision Plan shall be deemed to have final approval and shall be properly signed by a majority of the members of the Planning Board and Fire Chief.

(2) Signature Block Required. The Board Chairperson will sign the approved Plan as follows:

Approved: Town of Winter Harbor Planning Board

Signed

Chairperson

Date

\_\_\_\_\_

Conditions

\_\_\_\_\_

(2) **Filing of Plan Required.** Any subdivision Final Plan not recorded with the Hancock County Registry of Deeds by the applicant within ninety (90) days of the date upon which such Plan is approved and signed by the Planning Board shall become null and void. If the approval is based upon the granting of a variance from a subdivision standard, that fact must be noted on the Plan and the variance is not valid unless it is recorded within 90 days of subdivision approval. State statute requires a notation on the Final Plan if subdivision is exempt from the Maine Subdivision Law (30-A M.R.S.A. 4401, et seq).

(3) **Phased Development, Revision and Amendments.** At the time the Planning Board grants Final Plan approval, it may ~~permit the Plan to be divided~~, **at its' discretion, divide the plan** into two or more sections subject to any conditions the Board deems necessary in order to insure orderly development. The applicant may file a section of the approved Plan with the Municipal Officers and the Registry of Deeds if said section constitutes at least 10% of the total number of lots contained in the approved Plan. In these circumstances, approval of the remaining

sections of the Plan shall remain in effect for three (3) years or a period of time mutually agreed to by the Municipal Officers, Planning Board and the applicant. Any application for subdivision approval which constitutes a revision or amendment to a subdivision plan, which has been previously approved, shall indicate that fact on the application and shall identify the original subdivision plan being revised or amended. In reviewing such an application, the Planning Board shall make findings of fact establishing that the proposed revisions do or do not meet the required criteria.

**(4) Ownership Transferable.** The approved Final Plan is transferable to another party provided the prospective owner provides the documentation necessary to meet the conditions of adequate financial and technical capacity in Article VII (C) (2) and the guarantee, security or performance bond Article VII (C) (3), and receives approval of the Planning Board.

**E. Appeals.** The Planning Board is designated the Municipal Review Authority for all subdivisions. An appeal from a decision of the Planning Board must be submitted to the Winter Harbor Board of Appeals within thirty (30) days of the decision. Within thirty (30) days of receipt of an application for an administrative appeal, the Board of Appeals shall conduct a hearing which, in the case of appeals of subdivision decisions, shall be purely appellate and shall not be de novo.

**F. Plan Revisions After Approval.**

**(1) Changes.** No changes, erasures, modifications, or revisions shall be made in any Plan after approval has been given by the Planning Board and endorsed in writing on the Final Plan, unless the Plan is first resubmitted and the Planning Board approves any modifications. This notation must be included on the recorded Final Plan. This restriction includes all amendments to the subdivision project. In the event that a Plan is recorded without complying with this requirement, the same shall be considered null and void.

**(2) Plat Superseded.** If a subdivision plat or plan is presented for recording to a Register of Deeds and that plat or plan is a revision or amendment to an existing plat or plan, the Register shall indicate on the index for the original plat or plan that it has been superseded by another plat or plan and shall reference the book and page or cabinet and sheet on which the new plat or plan is recorded. In addition, the register shall insure that the book and page or cabinet and sheet on which the original plat or plan is recorded are referenced on the new plat or plan.

**(3) Phasing of Development.** The Board may approve plans to develop a major subdivision in separate and distinct phases. This may be accomplished by limiting final approval to those lots abutting that section of the proposed subdivision street which is covered by a performance guarantee. When development is phased, road construction shall commence from an existing public way. Final approval of lots in subsequent phases shall be given only upon satisfactory completion of all requirements pertaining to previous phases.

**(4) Release of Guarantee.** Prior to the release of any part of the performance guarantee, the Board shall determine to its satisfaction, in part upon the report of the municipal engineer or other qualified individual retained by the municipality and any other agencies and departments who may be involved, that the proposed improvements meet or exceed the design and construction requirements for that portion or phase of the subdivision for which the release is

requested.

**(5) Default or Violation.** If upon inspection, the municipal engineer or other qualified individual retained by the Board and paid for by the applicant's Non-Interest Bearing Escrow Account finds that any of the required improvements have not been constructed in accordance with the plans and specifications filed as part of the application, he/she shall report in writing to the Code Enforcement Officer, the Municipal Officers, the Board, and the applicant or builder. If the applicant does not respond appropriately to a notice of violation issued by the Code Enforcement Officer, the Municipal Officers are authorized to take enforcement action including prosecution by the Municipal Attorney.

**(6) Extension.** The Board may recommend a maximum extension of 12 months to the guaranteed performance period when the applicant can demonstrate, to the satisfaction of the Board and other interested officials or agencies, good cause for such extension. An additional extension of 12 months may be granted at the planning board's discretion for good cause, provided that at least 30 percent of the development is complete.

**(7) Certification of Compliance.** No parcel, lot or structure shall be conveyed, leased, occupied, or offered for sale, conveyance, lease or occupancy without certification from the Planning Board that the applicant has complied with all the terms of the subdivision's approval. This certificate may be issued for the various phases of completion.

## **ARTICLE VIII. INSPECTIONS, VIOLATIONS, ENFORCEMENT**

**A. Inspection of Required Improvements.** At least five (5) business days prior to commencing construction of required improvements, the applicant or builder shall notify the Code Enforcement Officer in writing of the date to commence construction of such improvements, so that the municipal officers can arrange for inspections to assure that all municipal specifications, requirements, and conditions of approval are met during the construction of required improvements, and to assure the satisfactory completion of improvements and utilities required by the Board.

**B. Required Improvements Not Completed.** If the inspecting official finds that any of the required improvements have not been constructed in accordance with the plans and specifications filed by the applicant, he/she shall so report in writing to the municipal officers, Board, and the applicant and builder. The Municipal Officers shall take the necessary steps to ensure compliance with the approved plan.

**C. Modification of Required Improvements.** 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 applicant shall obtain permission from the Board to modify the plans.

**D. Inspection at End of Construction Season.** At the close of each summer construction season the Town shall, at the expense of the applicant, have the site inspected by a qualified individual. By December 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.

**E. Survey Required.** Prior to the sale of any lot, the applicant shall provide the Board with a letter from a Registered Land Surveyor, stating that all markers shown on the plan have been installed.

**F. Certification by a Professional Engineer Required.** 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.

**G. Utility Services Permits Required.** No public utility, water district, sanitary district or any utility company of any kind shall install services to any lot or dwelling unit in a subdivision for which a Final Plan has not been approved by the Planning Board. Written authorization attesting to the validity and currency of all permits is required. Following installation of service, the company or district shall forward the written authorization to the municipal officials indicating that installation has been completed.

**H. Maintenance Required.** The applicant shall be required to maintain all improvements and provide for snow removal on streets and sidewalks until acceptance of the improvements by the municipality or control is placed with a lot Owners Association.

**I. Filing Non-Approved Final Plan Prohibited.** No subdivision Final Plan shall be filed or recorded in the Registry of Deeds until it has been approved by the Planning Board in accordance with all of the requirements, design standards, and construction specifications set forth in this Ordinance.

**J. Time Limit for Initiation and Completion.** Any subdivision Final Plan filed with the Hancock County Register of Deeds that is not initiated within two (2) years after approval by the Planning Board shall become null and void. Except in the case of a Phased Development Plan, failure to complete construction of the subdivision within five (5) years of the date of approval and signing of the Final Plan shall render the Plan null and void. Upon determining that a subdivision's approval has expired under this paragraph, (the Board shall have a notice placed in the Registry of Deeds to that effect.)

**K. Sale Prior to Approval Prohibited.** No person, firm, corporation or other legal entity may sell, lease, develop, build upon, convey for consideration, or offer or agree to sell, lease, develop, build upon or convey for consideration any land or dwelling unit in a subdivision which has not

been approved by the Planning Board and recorded in the Registry of Deeds. Any person, firm, corporation or other legal entity who sells, leases, develops, builds upon, or conveys for consideration any land or dwelling unit in a subdivision which has not been approved as required by this section shall be penalized in accordance with Maine Statute. The Attorney General or municipal officers may institute proceedings to enjoin the violation of this section.

**L. Unauthorized Changes Prohibited.** Any person who, after receiving approval from the Planning Board and recording the Final Plan at the Registry of Deeds, constructs or develops the subdivision, or transfers any lot, in a manner other than depicted on the approved Final Plan or amendments shall be penalized in accordance with Maine Statute.

**M. Municipal Remedies.** Any person or entity that violates the regulations outlined in this Ordinance may be liable to penalties as provided in 30-A M.R.S.A. Section 4452.

**N. Record of Amendments.**

- (1) Original Ordinance adopted at a Special Town Meeting 14 December, 1981
- (2) Section 12-218 (Sewer System) adopted 21 May, 1990
- (3) Section 12-221 (Waiver) adopted 12 December, 2002.
- (4) Updated Ordinance adopted at a Special Town Meeting 14 December, 2004
- (5) Updated Ordinance adopted at Special Town Meeting April 16, 2010

**Legal Disclaimer:**

The intent of this model ordinance is to provide Maine municipalities an example as information for review, reference, and consideration, at their sole discretion, regarding potential approaches to local regulation of wind energy development. Provided for informational purposes only, this model ordinance does not and is not intended to render any legal advice. Pertinent factual, legal, and other circumstances vary significantly among municipalities and are subject to changes. Municipalities considering use of this model ordinance or any of its provisions are advised and encouraged to consult with a qualified attorney.

**Wind Energy Facility Ordinance for Winter Harbor, Maine**

- 1.0 Title**
- 2.0 Authority**
- 3.0 Purpose**
- 4.0 Definitions**
- 5.0 Applicability**
- 6.0 Conflict and Severability**
- 7.0 Effective Date**
- 8.0 Classification of Wind Energy Facilities**
- 9.0 Administration**
- 10.0 Application Submission Requirements**
- 11.0 Meteorological Towers (MET Towers)**
- 12.0 General Standards**
- 13.0 Special Standards for Type 1A and 1B Wind Energy Facilities**
- 14.0 Special Standards for Type 2 and Type 3 Wind Energy Facilities**
- Appendix A: Application Fees**
- Appendix B: Type 2 and Type 3 Noise Control Standards**
- Appendix C: Type 2 and Type 3 Decommissioning Plan Standards**



**1.0 Title**

This Ordinance shall be known as the Wind Energy Facility Ordinance for the town of Winter Harbor.

**2.0 Authority**

This Ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section 1 of the Maine Constitution; the provisions of 30-A M.R.S. § 3001 (Home Rule), and the provisions of the Planning and Land Use Regulation Act, 30-A M.R.S. § 4312, *et seq.*

**3.0 Purpose**

The purpose of the Ordinance is to provide for the construction and operation of Wind Energy Facilities in Winter Harbor, subject to reasonable conditions that will protect the public health, safety, and welfare.

**4.0 Definitions**

Applicant is the legal entity, including successors and assigns, that files an application under this Ordinance.

Approved Residential Subdivision means a residential subdivision for which all-applicable land use permits have been issued, provided that the time for beginning construction under such permits has not expired.

Associated Facilities means elements of a Wind Energy Facility other than its Generating Facilities that are necessary to the proper operation and maintenance of the Wind Energy Facility, including but not limited to buildings, access roads, Generator Lead Lines and substations.

DEP Certification means a certification issued by the Department of Environmental Protection pursuant to 35-A M.R.S. § 3456 for a Wind Energy Development.

Generating Facilities means Wind Turbines and electrical lines, not including Generator Lead Lines, that are immediately associated with the Wind Turbines.

Generator Lead Line means a "generator interconnection transmission facility" as defined by 35-A M.R.S. § 3132 (1-B).

Historic Area means a Historic Site administered by the Bureau of Parks and Recreation of the Maine Department of Conservation, with the exception of the Arnold Trail.

Historic Site means any site, structure, district or archaeological site which has been officially included on the National Register of Historic Places and/or on the Maine Historic Resource Inventory, or which is established by qualified testimony as being of historic significance.

Locally-Designated Passive Recreation Area means any site or area designated by a municipality for passive recreation that is open and maintained for public use and which: a) has fixed boundaries, b) is owned in fee simple by a municipality or is accessible by virtue of public easement, c) is identified and described in a local comprehensive plan and, d) has been identified and designated at least nine months prior to the submission of the Applicant's Wind Energy Facility permit application.

Meteorological Tower (MET Tower) means a Tower used for the measurement and collection of wind data that supports various types of equipment, including but not limited to anemometers, data recorders, and solar power panels. MET Towers may also include wildlife related equipment such as ANABAT detectors, bird diverts and wildlife entanglement protectors.

Municipal Reviewing Authority means the municipal planning board, agency or office, or if none, the municipal officers.

Nacelle means the frame and housing at the top of the Tower that encloses the gearbox and generator.

Non-Participating Landowner means any landowner, other than a Participating Landowner whose land is located within Winter Harbor.

Occupied Building means a residence, school, hospital, house of worship, public library or other building that is occupied or in use as a primary residence or is customarily frequented by the public at the time when the permit application is submitted.

Participating Landowner means one or more Persons that hold title in fee or a leasehold interest with sublease rights to property on which Generating Facilities or Associated Facilities are proposed to be located pursuant to an agreement with the Applicant or an entity that has entered into an appropriate agreement with the Applicant allowing the Applicant to demonstrate the requisite right, title and interest in such property.

Person means an individual, corporation, partnership, firm, organization or other legal entity.

Planned Residence means a Residence for which all-applicable building and land use permits have been issued, provided that the time for beginning construction under such permits has not expired.

Protected Location means any location that is:

- 1) Accessible by foot, on a parcel of land owned by a Non-Participating Landowner containing a residence or planned residence, or an approved residential subdivision, house of worship, academic school, college, library, duly licensed hospital or nursing home near the

development site at the time an application for a Wind Energy Facility is submitted under this Ordinance;

2) Within a State Park, Baxter State Park, a National Park, a nature preserve owned by a land trust, the Maine Audubon Society or the Maine chapter of the Nature Conservancy, the Appalachian Trail, the Moosehorn National Wildlife refuge, a federally designated wilderness area, a state wilderness area designated by statute, a municipal park or a locally-designated passive recreation area, or any location within consolidated public reserve lands designated by rule by the Bureau of Public Lands as a Protected Location, or;

3) A hotel, motel, campsite or duly licensed campground that the municipal authority responsible for review and approval of the pending application under 9.1 has designated a Protected Location after making a determination that the health and welfare of the guests or the economic viability of the establishment will be unreasonably impacted by noise in excess of that allowed under section 13.1.3(b).

Residence means a building or structure, including manufactured housing, maintained for permanent or seasonal residential occupancy providing living, cooking and sleeping facilities and having permanent indoor or outdoor sanitary facilities, excluding recreational vehicles, tents and watercraft.

Scenic Resource means either a Scenic Resource of state or national significance, as defined in 35-A M.R.S § 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 means alternating changes in light intensity caused by the movement of Wind Turbine blades casting shadows on the ground or a stationary object.

Short Duration Repetitive Sounds means a sequence of repetitive sounds which occur more than once within an hour, each clearly discernible as an event and causing an increase in the sound level of at least 6 dBA on the fast meter response above the sound level observed immediately before and after the event, each typically less than ten seconds in duration, and which are inherent to the process or operation of the development and are foreseeable.

Sight Line Representation means a profile drawing showing prominent features, including but not limited to topography, buildings, and trees, along and in relation to a line of sight extending from an observer's eye to the lowest point visible on a proposed Tower.

Significant Wildlife Habitat means a Significant Wildlife Habitat as defined in 38 M.R.S. § 480-B(10).

Substantial Start means that construction shall be considered to be substantially commenced when any work beyond excavation, including but not limited to, the pouring of a slab or footings, the installation of piles, the construction of columns, or the placement of a Tower on a foundation has begun.

Tower means the freestanding structure on which a wind measuring or energy conversion system is mounted.

Turbine Height means the distance measured from the surface of the Tower foundation to the highest point of any turbine rotor blade measured at the highest arc of the blade.

Wind Energy Facility means a facility that uses one or more Wind Turbines to convert wind energy to electrical energy. A Wind Energy Facility includes Generating Facilities and Associated Facilities.

Wind Energy Facility, Type 1A means a Wind Energy Facility having a maximum generating capacity of less than 100kW, a maximum of one Wind Turbine and a maximum Turbine Height of 80 feet.

Wind Energy Facility, Type 1B means a Wind Energy Facility having a maximum generating capacity of less than 100kW and either more than one Wind Turbine, or one or more Wind Turbines with a Turbine Height greater than 80 feet.

Wind Energy Facility, Type 2 means a Wind Energy Facility having a maximum generating capacity of 100 kW or greater and which does not require a state permit issued by the Department of Environmental Protection under the Site Location of Development Act, 38 M.R.S.A. §481, *et seq.*

Wind Energy Facility, Type 3 means a Wind Energy Facility having a generating capacity of 100kW or greater and which requires a state permit issued by the Department of Environmental Protection under the Site Location of Development Act, 38 M.R.S. §481, *et seq.*

Wind Turbine means a system for the conversion of wind energy into electricity that is comprised of a Tower, generator, Nacelle, rotor and transformer.

## 5.0 Applicability

- 5.1 This Ordinance applies to any Wind Energy Facility proposed for construction in the Town of Winter Harbor after the effective date of this Ordinance. This Ordinance does not apply to Associated Facilities unless the Generating Facilities are located within the Town of Winter Harbor in which case this Ordinance applies to both the Generating Facilities and the Associated Facilities.

5.1 A Wind Energy Facility that is the subject of an application determined to be complete by the Winter Harbor Planning Board prior to the effective date of this Ordinance shall not be required to meet the requirements of this Ordinance; provided that any physical modifications after the effective date of the Ordinance shall be subject to the permitting requirements of Section 9.2.

**6.0 Conflict and Severability**

6.1 If there is a conflict between provisions in this Ordinance, the more stringent shall apply. If there is a conflict between a provision in this Ordinance and that of another Winter Harbor ordinance, the provision of this Ordinance shall apply.

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

**7.0 Effective Date**

This Ordinance becomes effective on \_\_\_\_\_.

**8.0 Classification of Wind Energy Facilities**

All Wind Energy Facilities shall be classified in accordance with Table 1 below:

**Table 1: Classification of Wind Energy Facilities and Corresponding Local Review and Approval Authority**

| <b>Facility Type</b> | <b>Aggregate Capacity</b> | <b>Turbine Height</b> | <b>Max. # of Turbines</b> | <b>DEP Site Location Permit Required</b> | <b>Local Review and Approval</b> |
|----------------------|---------------------------|-----------------------|---------------------------|------------------------------------------|----------------------------------|
| 1A                   | <100 kW                   | ≤ 80'                 | 1                         | No                                       | Planning Board                   |
| 1B                   | <100 kW                   | > 80'                 | NA                        | No                                       | Planning Board                   |
| 2                    | ≥100 kW                   | NA                    | NA                        | No <sup>1</sup>                          | Planning Board                   |
| 3                    | ≥ 100 kW                  | NA                    | NA                        | Yes <sup>2</sup>                         | Planning Board                   |

<sup>1</sup> Per 35-A MRSA §3456. DEP Certificate required if energy generated is for sale or use by a Person other than the generator.

<sup>2</sup> Per 38 MRSA §482(2)

**9.0 Administration**

9.1 Review and Approval Authority

1. The Winter Harbor Planning Board is authorized to review all applications for Type 1A, 1B, Type 2, and Type 3 Wind Energy Facilities and may approve, deny or approve such applications with conditions in accordance with this Ordinance.

**9.2 Permit Required**

1. No Wind Energy Facility shall be constructed or located within the Town of Winter Harbor without a permit issued in accordance with this Ordinance and other town land use ordinances.
2. Any physical modification to an existing Wind Energy Facility that materially alters the location or increases the area of development on the site or that increases the Turbine Height or the level of sound emissions of any Wind Turbine shall require a permit modification under this Ordinance. Like-kind replacements and routine maintenance and repairs shall not require a permit modification.

**9.3 Permit Applications**

1. Application components. A Wind Energy Facility permit application shall consist of the application form, application fee, and supporting documents, as described below:
  - a. Application Forms. The municipality shall provide the application form which shall be signed by: 1) a Person with right, title and interest in the subject property or; 2) a Person having written authorization from a Person with right, title and interest in the subject property. The signature shall be dated and the signatory shall certify that the information in the application is complete and correct and that the proposed facility will be constructed and operated in accordance with the standards of this ordinance and all approval and permit conditions, if any.
  - b. Application Fees. Application fees shall be assessed and paid upon submission of the application in accordance with Appendix A of this Ordinance.
  - c. Supporting Documents. The application shall include all additional documents necessary to satisfy the applicable submission requirements under section 10 of this Ordinance.
2. Application Submission. The Applicant shall submit its application for a Wind Energy Facility permit to the Codes Enforcement Officer who shall note on the application the date on which it was received.
3. Changes to a Pending Application

- a. The Applicant shall promptly notify the municipal entity responsible for review and approval of a pending application under section 9.1 of any changes the Applicant proposes to make to information contained in the application.
- b. If changes are proposed to a pending application after a public hearing has been held, the Winter Harbor Planning Board may consider those changes and continue with the review and approval process without a renewed public hearing if it determines that the changes do not materially alter the application. If the Winter Harbor Planning Board determines that the proposed changes do materially alter the application it shall schedule and conduct another public hearing within 30 days of that determination. In making its determination, the Winter Harbor Planning Board shall consider whether the proposed changes involve potential adverse effects different than or in addition to those addressed in the initial application.

#### **9.4 Permit Application Procedures**

##### **1. All Wind Energy Facility Applications**

- a. The Applicant is strongly encouraged to meet with the Codes Enforcement Officer before submitting an application. At this pre-application meeting, the Codes Enforcement Officer will explain the Ordinance's provisions, application forms, and submission requirements. The Applicant should provide photos of the proposed site and written descriptions of the proposed facility and the proposed site, including its location and lot area.
- b. An application shall be eligible for consideration at a regularly-scheduled meeting of the Winter Harbor Planning Board only if the applicant submits it at least 14 days prior to the meeting.
- c. Within 30 days after receipt of the application by the Codes Enforcement Officer, the Winter Harbor Planning Board shall notify the Applicant in writing either that the application is complete or, if the application is incomplete, the specific additional material needed to complete the application. The Winter Harbor Planning Board may waive any submission requirement if it issues a written finding that, due to special circumstances of the application, adherence to that requirement is not necessary to determine compliance with the standards of this Ordinance.
- d. The Winter Harbor Planning Board shall hold a public hearing for a Type 3 Wind Energy Facility application within 60 days after determining that the application is complete. The Winter Harbor Planning Board may decide to hold a public hearing for a Type 1A, Type 1B or a Type 2 Wind Energy Facility application. If it decides to hold a public hearing for a Type 1 and/or Type 1B application, the Winter Harbor

Planning Board shall hold that hearing within 30 days after determining that application is complete. If it decides to hold a public hearing for a Type 2 application, the Winter Harbor Planning Board shall hold that hearing within 60 days after determining that the application is complete.

- e. Within 60 days after determining that an application for a Type 1A and Type 1B Wind Energy Facility is complete or within 90 days after determining that an application for a Type 2 or Type 3 Wind Energy Facility is complete, the Winter Harbor Planning Board shall issue a written order: 1) denying approval of the proposed Wind Energy Facility, 2) granting approval of the proposed Wind Energy Facility or, 3) granting approval of the proposed Wind Energy Facility with conditions. In making its decision, the Winter Harbor Planning Board shall make findings on whether the proposed Wind Energy Facility meets the applicable criteria described in sections 12, 13, and 14.
- f. With the agreement of the applicant, the Winter Harbor Planning Board may extend the procedural time frames of this section.

**Table 2:  
Procedural Time Frames**

| <b>Facility Type</b> | <b>Application Completeness</b> | <b>Public Hearing</b> | <b>Final Decision</b> |
|----------------------|---------------------------------|-----------------------|-----------------------|
| 1A                   | ≤30 days <sup>1</sup>           | <30 days              | ≤60 days <sup>2</sup> |
| 1B                   | ≤30 days <sup>1</sup>           | ≤30 days <sup>2</sup> | ≤60 days <sup>2</sup> |
| 2                    | ≤30 days <sup>1</sup>           | ≤60 days <sup>2</sup> | ≤90 days <sup>2</sup> |
| 3                    | ≤60 days <sup>1</sup>           | ≤90 days <sup>2</sup> | 120 days <sup>2</sup> |

<sup>1</sup> Days after receipt of the application by the Codes Enforcement Officer

<sup>2</sup> Days after the application is determined to be complete

**9.5 Notice of Meetings**

Ten days prior to any meeting at which an application for a Type 1A, Type 1B, Type 2, or Type 3 Wind Energy Facility is to be considered, the Winter Harbor Planning Board shall send notice by first class mail, to the applicant and all owners of property abutting the property on which the Wind Energy Facility is proposed to be located. The notice shall state the date, time and place of the meeting and the proposed location and the classification of the proposed Wind Energy Facility.



**9.6 Public Hearings**

The Winter Harbor Planning Board shall have notice of the date, time, and place of any public hearing and the proposed location and the classification of the proposed Wind Energy Facility:

1. Published at least once in a newspaper having general circulation within the municipality. The date of the first publication shall be at least 10 days before the hearing.
2. Mailed by first class mail to the Applicant and to owners of property within 500 feet of the property on which the Wind Energy Facility is proposed to be located, at least 10 days before the public hearing. The Winter Harbor Planning Board shall maintain a list of property owners to whom notice is mailed in the application file. Failure of any of these property owners to receive a notice shall not invalidate the public hearing, nor shall it require the Winter Harbor Planning Board to schedule another hearing.

**9.7 Professional Services**

In reviewing the application for compliance with this Ordinance, the Winter Harbor Planning Board may retain professional services, including but not limited to those of an attorney, sound engineer or various consultants, to verify information presented by the Applicant. The attorney or consultant shall first estimate the reasonable cost of such review and the Applicant shall deposit, with the municipality, the full estimated cost, which the municipality shall place in an escrow account. The municipality shall pay the attorney or consultant from the escrow account and reimburse the Applicant if funds remain after payment.

**9.8 Expiration of Permits**

Permits shall expire: 1) two years after the date of approval unless a substantial start on construction has occurred and; 2) three years after the date of approval unless construction of the Wind Energy Facility has been completed. If a permit for a Type 2 or Type 3 Wind Energy Facility expires, the Applicant shall implement pertinent provisions of the approved decommissioning plan. Upon the Applicant's written request, the municipal entity responsible for review and approval of the application under section 9.1 may extend either or both expiration time limits by one year.

**9.9 Access**

The Codes Enforcement Officer shall have access to the site at all times to review the progress of the work and shall have the authority to review all records and documents directly related to the design, construction and operation of the facility.

**9.10 Enforcement**

1. It shall be unlawful for any Person to violate or fail to comply with or take any action that is contrary to the terms of the Ordinance, or to violate or fail to comply with any permit issued under the Ordinance, or to cause another to violate or fail to comply or take any action which is contrary to the terms of the Ordinance or any permit under the Ordinance.
  
2. If the Code Enforcement Officer or other Person charged with enforcement of municipal laws determines that a violation of the Ordinance or the permit has occurred, the Codes Enforcement Officer shall provide written notice to any Person alleged to be in violation of this Ordinance or permit. If the alleged violation does not pose an immediate threat to public health or safety, the Codes Enforcement Officer and the alleged violator shall engage in good faith negotiations to resolve the alleged violation. Such negotiations shall be conducted within thirty (30) days of the notice of violation and, with the consent of the alleged violator, may be extended.
  
3. If, after thirty (30) days from the date of notice of violation or further period as agreed to by the alleged violator, the Codes Enforcement Officer determines, in the officer's reasonable discretion, that the parties have not resolved the alleged violation, the Codes Enforcement Officer may institute civil enforcement proceedings or any other remedy at law to ensure compliance with the Ordinance or permit.

**9.11 Appeals**

Any Person aggrieved by a decision of the Codes Enforcement Officer or the Winter Harbor Planning Board under this Ordinance may appeal the decision to the Board of Appeals, as provided by Section 12.316 of the Winter Harbor Zoning Ordinance.

**10.0 Application Submission Requirements**

**10.1 General Submission Requirements**

1. A completed application form including:
  - a. The Applicant and Participating Landowner(s)' name(s) and contact information.
  - b. The address, tax map number, zone and owner(s) of the proposed facility site and any contiguous parcels owned by Participating Landowners.
  - c. The tax map number, zone, current use, owner(s) and addresses of owner(s) of parcels that abut the proposed facility site or abut parcels of Participating Landowners that is contiguous with the proposed facility site plus all landowners within a one (1) mile radius.

- d. An affirmation, signed and dated by the Applicant, that the information provided in the application is correct and that the proposed Wind Energy Facility, if approved and built, shall be constructed and operated in accordance with the standards of this ordinance and all conditions of approval, if any
2. Receipt showing payment of application fee in accordance with Appendix A.
3. A copy of a deed, easement, purchase option or other comparable documentation demonstrating that the Applicant has right, title or interest in the proposed facility site.
4. Location map showing the boundaries of the proposed facility site and all contiguous property under total or partial control of the Applicant or Participating Landowner(s) and any Scenic Resource or Historic Site within one mile of the proposed development.
5. Description of the proposed Wind Energy Facility that includes the number and aggregate generating capacity of all Wind Turbines, the Turbine Height and manufacturer's specifications for each Wind Turbine (including but not limited to the make, model, maximum generating capacity, sound emission levels and types of overspeed controls) and a description of Associated Facilities.
6. Site plan showing the proposed location of each Wind Turbine and Associated Facilities and any of the following features located within 500 feet of any Wind Turbine: parcel boundaries, required setbacks, topographic contour lines (maximum 20-foot interval), roads, rights-of-way, overhead utility lines, buildings (identified by use), land cover, wetlands, streams, water bodies and areas proposed to be re-graded or cleared of vegetation.
  - a. In addition to the information in 6, above, site plans for Type 1A, Type 1B, Type 2 and Type 3 Wind Energy Facilities shall show the location and average height of tree cover to be retained and the location, variety, planting height and mature height of proposed trees, if any.
7. Written evidence that the Environmental Coordinator of the Maine Department of Inland Fisheries and Wildlife (MDIFW) and that the Maine Natural Areas Program (MNAP) have both been notified of the pending application and the location and Turbine Height of all proposed Wind Turbines and copies of any responses received from these agencies.
8. Written evidence that the provider of electrical service to the property has been notified of the intent to connect an electric generator to the electricity grid, if such connection is proposed.
9. Description of emergency and normal shutdown procedures.
10. Photographs of existing conditions at the site.

11. An application for a Type 1A or 1B Wind Energy Facility shall include structural drawings of the Tower foundation and anchoring system: a) prepared by the Wind Turbine or Tower manufacturer, b) prepared in accordance with the manufacturer's specifications or, c) prepared and stamped by a Maine-licensed professional engineer.
12. An application for a Type 1A or Type 1B Wind Energy Facility shall include:
  - a. a written statement, signed by the Applicant, that certifies that the proposed facility is designed to meet the applicable noise control standards under section 13.1.3 and acknowledges the Applicant's obligation to take remedial action in accordance with section 13.1.6 if the Codes Enforcement Officer determines those standards are not being met or;
  - b. a written request for review under section 14.1 along with information required under Appendix B, subsection B (Submissions).
13. An Application for Type 1A, Type 1B, Type 2 or Type 3 Wind Energy Facility shall include the following site line, photographic and, if applicable, screening information, provided that an Applicant for a Type 3 Wind Energy Facility may provide this information as part of a visual assessment if required pursuant to section 14.5:
  - a. Sight Line Representations of each Wind Turbine from the nearest Occupied Building and from at least one other representative location within 500 feet of the Wind Turbine, such as a Scenic Resource or another Occupied Building. Each Site Line Representation shall be drawn at a scale sufficiently large to make it legible. If screening is proposed, the proposed screening device, such as trees, shrubs or fencing, shall be depicted on the drawing along with the sight line as altered by the screening.
    - a-1. The Winter Harbor Planning Board may request a sight line from other locations at its' choosing.
  - b. A current four-inch by six-inch color photograph of the proposed site of the Wind Turbine(s) taken from viewpoints corresponding to each of the Site Line Representations.
  - c. One copy of each of the photographs described in b, above, onto which is superimposed an accurately scaled and sited representation of the Wind Turbine(s).
14. An application for a Type 2 Wind Energy Facility that generates energy primarily for sale or use by a Person other than the generator, shall include, if issued at the time of application, certification from the Department of Environmental Protection pursuant to 35-A M.R.S. § 3456 that the Wind Energy Facility:

- a. Will meet the requirements of the noise control rules adopted by the Board of Environmental Protection pursuant to the Site Location of Development Act, 38 M.R.S. §481, *et seq.*;
- b. Will be designed and sited to avoid unreasonable adverse Shadow Flicker effects; and
- c. Will be constructed with setbacks adequate to protect public safety.

If such certification has not been issued at the time of application, the Applicant shall include written evidence that the Applicant has applied for certification.

#### 10.2 Additional Submission Requirements for an Application for a Type 2 and 3 Wind Energy Facility

1. Certificates of design compliance obtained by the equipment manufacturers from Underwriters Laboratories, Det Norske Veritas, or other similar certifying organizations.
2. Decommissioning plan in conformance with Appendix C.
3. Written summary of operation and maintenance procedures for the Wind Energy Facility and a maintenance plan for access roads, erosion and sedimentation controls and storm water management facilities.
4. Standard boundary survey of the subject property stamped by a Maine-licensed surveyor. The Winter Harbor Planning Board may waive this requirement if it determines that the Applicant has provided information sufficient to identify property boundaries to the extent necessary.
5. Visual impact assessment, if required pursuant to section 14.5.
6. Stormwater management plan stamped by a Maine-licensed professional engineer.
7. Sound level analysis, prepared by a qualified engineer, which addresses the standards of section 14.1.
8. Shadow Flicker analysis based on WindPro or other modeling software approved by the Department of Environmental Protection.
9. Foundation and anchoring system drawings that are stamped by a Maine-licensed professional engineer.
10. A blasting plan prepared in accordance with all applicable state laws and regulations.
11. Other relevant studies, reports, certifications and approvals as may be reasonably requested by the Winter Harbor Planning Board to ensure compliance with this Ordinance.

**11.0 Meteorological Towers (MET Towers)**

Applications for Meteorological (MET) Towers shall be subject to the submission and review standards for a Type 1A Wind Energy Facility, as applicable, except that no height limitation shall apply. A permit for a MET Tower shall be valid for 2 years and 2 months from the date of issuance. The Codes Enforcement Officer may grant one or more one-year extensions of this permit period. Within 30 days following removal of a MET Tower, the Applicant shall restore the site to its original condition to the extent practicable. The provisions of this section do not apply to permanent MET Towers included as Associated Facilities in approved Wind Energy Facility applications.

**12.0 General Standards****12.1 Safety Setbacks**

Wind Turbines shall be set back a horizontal distance equivalent to 150% of the Turbine Height from property boundaries, public and private rights-of-way and overhead utility lines that are not part of the proposed Generating Facility except that the entity responsible for review and approval of the application may allow a reduced setback if the Applicant submits, in writing: 1) a waiver of the property boundary setback signed by the pertinent abutting landowner or; 2) evidence, such as operating protocols, safety programs, or recommendations from the manufacturer or a licensed professional engineer with appropriate expertise and experience with Wind Turbines, that demonstrates that the reduced setback proposed by the Applicant is appropriate.

**12.2 Natural Resource Protection**

A Wind Energy Facility shall not have an unreasonable adverse effect on rare, threatened, or endangered wildlife, significant wildlife habitat, rare, threatened or endangered plants and rare and exemplary plant communities. In making its determination under this subsection, the Winter Harbor Planning Board shall consider pertinent application materials and the written comments and/or recommendations, if any, of the Maine Department of Inland Fisheries and Wildlife (MDIFW) Environmental Coordinator and the Maine Natural Areas Program (MNAP).

**12.3 Building Permit**

All components of the Wind Energy Facility shall conform to relevant and applicable local and state building codes.

**12.4 Overspeed Controls and Brakes**

Each Wind Turbine shall be equipped with an overspeed control system that: 1) includes both an aerodynamic control such as stall regulation, variable blade pitch, or other similar system, and a mechanical brake that operates in fail safe mode; or 2) has been designed by the manufacturer or a licensed civil engineer and found by the municipal entity responsible for review and approval of the application under 9.1, based on its review of a written description of the design and function of the system, to meet the needs of public safety.

12.5 Electrical Components and Interconnections

All electrical components of the Wind Energy Facility shall conform to relevant and applicable local, state, and national codes.

12.6 Access

All ground-mounted electrical and control equipment and all access doors to a Wind Turbine shall be labeled and secured to prevent unauthorized access. A Wind Tower shall not be climbable up to a minimum of fifteen (15) feet above ground surface.

12.7 Blade Clearance

The minimum distance between the ground and all blades of a Wind Turbine shall be 25 feet as measured at the lowest arc of the blades.

12.8 Signal Interference

The Applicant shall make reasonable efforts to avoid and mitigate to the extent practicable any disruption or loss of radio, telephone, television, or similar signals caused by the Wind Energy Facility. The Wind Energy Facility shall be operated in accordance with Federal Communication Commission standards regarding signal interference.

12.9 Structure Type

With the exception of Meteorological (MET) Towers, Towers shall be monopoles with no guy wires. This requirement may be waived if the Applicant demonstrates to the satisfaction of the Winter Harbor Planning Board, that there is no practicable alternative. Bird flight diverters must be installed on any guy wires that are permitted.

12.10 Erosion Control

Erosion of soil and sedimentation shall be minimized by employing "best management practices" in the *"Maine Erosion Control Handbook for Construction: Best Management Practices"*, March 2003.

12.11 Building-Mounted Wind Turbines

Building-mounted Wind Turbines are not permitted.

12.12 Visual Appearance

1. A Wind Turbine shall be a non-obtrusive color such as white, off-white or gray, or as may otherwise be required by another governmental agency with jurisdiction over the Wind Energy Facility.
2. A Wind Turbine shall not be lighted artificially, except to the extent consistent with Federal Aviation Administration recommendations or other applicable authority that

regulates air safety or as is otherwise required by another governmental agency with jurisdiction over the Wind Energy Facility.

3. A Wind Turbine shall not be used to support signs and shall not display advertising except for reasonable and incidental identification of the turbine manufacturer, facility owner and operator, and for warnings.

**12.13 Visibility of Wind Turbine**

The following requirements apply, to the extent practicable, to Type 1A, Type 1B and Type 2 Wind Energy Facilities:

1. To the extent that doing so does not inhibit adequate access to the wind resource, each Wind Turbine shall be located to maximize the effectiveness of existing vegetation, structures and topographic features in screening views of the Wind Turbine from Occupied Buildings and Scenic Resources.
2. When existing features do not screen views of a Wind Turbine from Residences and Scenic Resources, screening may be required, where feasible and effective, through the planting of trees and/or shrubs. In order to maximize the screening effect and minimize wind turbulence near the Wind Turbine, plantings should be situated as near as possible to the point from which the Wind Turbine is being viewed. Such plantings should be of native varieties.

**13.0 Special Standards for Type 1A and Type 1B Wind Energy Facilities**

13.1 Noise emanating from a Type 1A or Type 1B Wind Energy Facility shall be controlled in accordance with the provisions of this section or, upon the written request of the applicant, the provisions of section 14.1. If the Applicant chooses review under section 14.1, the provisions of 13.1.1, 13.1.2 and 13.1.6 shall apply, but the provisions of 13.1.3, 13.1.4 and 13.1.5 shall not apply.

1. The sound level limits contained in this section apply only to areas that are defined as Protected Locations and to property boundaries that describe the outer limits of the facility site in combination with any parcel(s) owned by a Participating Land-Owner that are contiguous with the facility site.
2. The sound level limits contained in this section do not apply to the facility site or any parcel(s) owned by a Participating Land-Owner that are contiguous with the facility site.
3. The sound levels resulting from routine operation of a Wind Energy Facility, as measured in accordance with the procedures described in section 13.1.5 shall not exceed the limits specified for the following locations and times:
  - a. At a Protected Location with no living and sleeping quarters:



55 dBA during the Protected Location's regular hours of operation

b. At a Protected Location with living and sleeping quarters:

1. Area(s) within 1000 feet of living and sleeping quarters:

45 dBA between 7:00 p.m. and 7:00 a.m.

55 dBA between 7:00 a.m. and 7:00 p.m.

2. Area(s) more than 1000 feet from living and sleeping quarters:

55dBA at all times.

c. At property boundaries that describe the outer limits of the facility site combined with any parcel(s) owned by a Participating Land-Owner that are contiguous with the facility site:

75 dBA at all times.

4. If the Applicant submits the certification and acknowledgement required by Section 10.1.12(1), the municipal entity responsible for review and approval of the application under Section 9.1 shall determine, for purposes of issuing its approval, that the pertinent sound-level limits under section 13.1.1 have been met, subject to the Applicant's obligation to take remedial action as necessary under section 13.1.4.
5. The Codes Enforcement Office may perform measurements of sound levels resulting from routine operation of an installed Type 1A or Type 1B Wind Energy Facility at the officer's own initiative or in response to a noise-related complaint to determine compliance with the pertinent standards in section 13.1.1. Such measurements shall be performed as follows:
  - a. Measurements shall be obtained during representative weather conditions when the sound of the Wind Energy Facility is most clearly noticeable. Preferable weather conditions for sound measurements at distances greater than about 500 feet from the sound source include overcast days when the measurement location is downwind of the Wind Turbine and inversion periods (which most commonly occur at night).
  - b. Sound levels shall be measured at least four (4) feet above the ground by a meter set on the A-weighted response scale, fast response. The meter shall meet the latest version of American National Standards Institute (ANSI S1.4.) "American Standard Specification for General Purpose Sound Level Meters and shall have been calibrated at a recognized laboratory within the past year.

c. 5 dBA shall be added to sound levels of any Short Duration Repetitive Sound measured in accordance with paragraphs a and b.

6. The Applicant shall operate the proposed Wind Energy Facility in conformance with the sound level limits of section 13.1 or section 14.1, as applicable. If, based on post-installation measurements taken in accordance with section 13.1.3 or section 14.1, as applicable, the Codes Enforcement Officer determines that the applicable sound-level limits are not being met, the Applicant shall, at the Applicant's expense and in accordance with the Town of Winter Harbor Wind Energy Facility Ordinance and in consultation with the Codes Enforcement Officer, take remedial action deemed necessary by the Codes Enforcement Officer to ensure compliance with those limits. Remedial action that the Codes Enforcement Officer may require, includes, but shall not be limited to, one or more of the following:
- a. Modification or limitation of operations during certain hours or wind conditions;
  - b. Maintenance, repair, modification or replacement of equipment;
  - c. Relocation of the Wind Turbine(s); and,
  - d. Removal of the Wind Turbine(s) provided that the Codes Enforcement Officer may require removal of the Wind Turbine(s) only if the Codes Enforcement Officer determines that there is no practicable alternative.

### **13.2 Discontinued Use**

- 1. A Type 1A or Type 1B Wind Energy Facility that is not generating electricity for twelve (12) consecutive months shall be deemed a discontinued use and shall be removed from the property by the Applicant within 120 days of receipt of notice from the Codes Enforcement Officer, unless the Applicant provides information that the Winter Harbor Planning Board deems sufficient to demonstrate that the project has not been discontinued and should not be removed. If the Wind Energy Facility is not removed within this time period, the municipality may remove the turbine at the Applicant's expense. The Applicant shall pay all site reclamation costs deemed necessary and reasonable to return the site to its pre-construction condition, including the removal of roads and reestablishment of vegetation.
- 2. If a surety has been given to the municipality for removal of a Type 1B Wind Energy Facility, the Applicant may apply to the Winter Harbor Planning Board for release of the surety when the Wind Energy Facility has been removed to the satisfaction of the Codes Enforcement Officer.

## **14.0 Special Standards for Type 2 and Type 3 Wind Energy Facilities**

### **14.1 Control of Noise**

Noise emanating from a Type 2 Wind Energy Facility, a Type 3 Wind Energy Facility, or, upon written request of the Applicant pursuant to section 13.1, a Type 1A or Type 1B Wind Energy Facility shall be controlled in accordance with the provisions of Appendix B

If there is a conflict between a provision of Appendix B and another provision of this ordinance, the provision of Appendix B shall apply.

**14.2 Use of Public Roads**

1. The Applicant shall identify all state and local public roads to be used within the Town of Winter Harbor to transport equipment and parts for construction, operation or maintenance of a Type 2 or Type 3 Wind Energy Facility.
2. The Town Engineer, Road Commissioner or a qualified third-party engineer reasonably acceptable to both the Winter Harbor Planning Board and the Applicant and paid for by the Applicant pursuant to Section 9.7 of the Ordinance, shall document road conditions prior to construction. The Town Engineer, Road Commissioner or third-party engineer shall document road conditions again thirty (30) days after construction is complete or as weather permits.
3. The Applicant shall demonstrate, to the satisfaction of the Winter Harbor Planning Board, that it has financial resources sufficient to comply with subsection 4, below, and the Winter Harbor Planning Board may require the Applicant to post a bond or other security in order to ensure such compliance.
4. Any road damage caused by the Applicant or its contractors shall be promptly repaired at the Applicant's expense.

**14.3 Warnings**

A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.

**14.4 Artificial Habitat**

To the extent practicable, the creation of artificial habitat for raptors or raptor prey shall be minimized. In making its determination under this subsection the Winter Harbor Planning Board shall consider comments and recommendations, if any, provided by the Maine Department of Inland Fisheries and Wildlife.

**14.5 Effect on Scenic Resources**

1. Except as otherwise provided in this subsection, if a Type 2 or Type 3 Wind Energy Facility is proposed for location in or is visible from a Scenic Resource, the Applicant shall provide the Winter Harbor Planning Board a visual impact assessment that addresses the evaluation criteria in subsection 14.5.3. There is a rebuttable presumption that a visual impact assessment is not required for those portions of a Type 2 or Type 3 Wind Energy Facility that are located more than 5 miles, measured

horizontally, from a Scenic Resource. The Winter Harbor Planning Board may require a visual impact assessment for portions of the Type 2 or Type 3 Wind Energy Facility located more than 5 miles and up to 10 miles from a Scenic Resource if it finds that a visual impact assessment is needed to determine if there is the potential for significant adverse effects on the Scenic Resource. Any interested Person must submit information intended to rebut the presumption to the Winter Harbor Planning Board within 30 days of acceptance of the application as complete. The Winter Harbor Planning Board shall determine if the presumption is rebutted based on a preponderance of evidence in the record.

2. The Winter Harbor Planning Board shall determine, based on consideration of the evaluation criteria in subsection 14.5.3, whether the Type 2 or 3 Wind Energy Facility significantly compromises views from a Scenic Resource such that the proposed facility has an unreasonable adverse effect on the scenic character or existing uses related to scenic character of that Scenic Resource.
3. In making its determination pursuant to subsection 14.5.2, and in determining whether an Applicant for a Type 2 or 3 Wind Energy Facility located more than 3 miles from a Scenic Resource must provide a visual impact assessment in accordance with subsection 14.5.1, the Winter Harbor Planning Board shall consider:
  - a. The significance of the potentially affected Scenic Resource;
  - b. The existing character of the surrounding area;
  - c. The expectations of the typical viewer;
  - d. The Type 2 or Type 3 Wind Energy Facility's purpose and the context of the proposed activity;
  - e. The extent, nature and duration of potentially affected public uses of the Scenic Resource and the potential effect on the public's continued use and enjoyment of the Scenic Resource; and
  - f. The scope and scale of the potential effect of views of the Wind Energy Facility on the Scenic Resource, including but not limited to issues related to the number and extent of Wind Turbines visible from the Scenic Resource, the distance from the Scenic Resource and the effect of prominent features of the Wind Energy Facility on the landscape.

A finding by the Winter Harbor Planning Board that the Type 2 or Type 3 Wind Energy Facility is a highly visible feature in the landscape is not a solely sufficient basis for determination that it has an unreasonable adverse effect on the scenic character and existing uses related to scenic character of a Scenic Resource. In making its determination under subsection 14.5.2, the Winter Harbor Planning Board shall consider insignificant the effects of portions of a Type 2 or Type 3 Wind Energy Facility located more than 10 miles, measured horizontally, from a Scenic Resource.

**14.6 Shadow Flicker**

Type 1A and Type 1B, Type 2 and Type 3 Wind Energy Facilities shall be designed to avoid unreasonable adverse shadow flicker effect at any Occupied Building located on a Non-Participating Landowner's property.

**14.7 Relationship to DEP Certification and Permitting**

1. For a Type 2 Wind Energy Facility for which a DEP Certification has been submitted in accordance with section 10.1.14, the Winter Harbor Planning Board shall consider, to the extent applicable, pertinent findings in that certification when making its determination under sections 12.1, 14.1, and 14.6. There is a rebuttable presumption that a Wind Energy Facility that has obtained DEP Certification meets the requirements of sections 12.1, 14.1, and 14.6. The Winter Harbor Planning Board may, as a condition of approval of a Type 2 Wind Energy Facility that generates energy for sale or use by a person other than the generator, deem DEP's issuance of a certificate for the development sufficient to meet, in whole or in part, as applicable, the requirements of sections 12.1, 14.1, 14.6.
2. If DEP has issued a Site Location of Development Act permit for a Type 3 Wind Energy Facility pursuant to 38 M.R.S. § 484(3), there is a rebuttable presumption that the development meets the requirements of sections 12.1, 12.2, 14.1, 14.6, 14.12 and, as it pertains to Scenic Resources of state or national significance as defined by 35-A M.R.S. §3451(9), section 14.5. The Winter Harbor Planning Board may, as a condition of approval of a Type 3 Wind Energy Facility, deem DEP's issuance of a permit for the development sufficient to meet, in whole or in part, as applicable, the requirements of sections 12.1, 12.2, 14.1, 14.6, 14.12 and, as it pertains to Scenic Resources of state or national significance, section 14.5.

**14.8 Local Emergency Services**

1. The Applicant shall provide a copy of the project summary and site plan to local emergency service providers, including paid or volunteer fire department(s).
2. Upon request, the Applicant shall cooperate with emergency service providers to develop and coordinate implementation of an emergency response plan for a Type 2 or Type 3 Wind Energy Facility.
3. A Wind Turbine shall be equipped with an appropriate fire suppression system to address fires within the Nacelle portion of the turbine or shall otherwise address the issue of fire safety to the satisfaction of the Winter Harbor Planning Board.

**14.9 Liability Insurance**

The Applicant or an Applicant's designee acceptable to the Winter Harbor Planning Board shall maintain a current general liability policy for the Type 2 or Type 3 Wind Energy Facility that covers bodily injury and property damage with limits in an amount commensurate with

the scope and scale of the Facility. The Applicant or its designee shall make certificates of insurance available to the Winter Harbor Planning Board upon request.

#### **14.10 Design Safety Certification**

Each Wind Turbine shall conform to applicable industry standards including those of the American National Standards Institute (ANSI) and at least one of the following: Underwriters Laboratories, Det Norske Veritas, Germanischer Lloyd Wind Energies, or other similar certifying organization.

#### **14.11 Public Inquiries and Complaints**

1. The Applicant or its designee shall maintain a phone number and identify a responsible Person for the public to contact with inquiries and complaints throughout the life of the Wind Energy Facility.
2. The Applicant or its designee shall make reasonable efforts to respond to the public's inquiries and complaints and shall provide written copies of all complaints and the company's resolution or response to the Codes Enforcement upon request.

#### **14.12 Decommissioning**

The Applicant shall prepare a decommissioning plan in conformance with Appendix C.

#### **14.13 Blasting**

Owner/operator shall not undertake any blasting in connection with the construction of the Wind Turbine unless Applicant has notified the Town and submitted a blasting plan consistent with applicable laws and regulations. The plan must be reviewed and approved by the Planning Board before any blasting may take place. No blasting shall be undertaken without a minimum 48-hour notification to all residents within a two-mile radius, measured horizontally, from the blasting area. All blasting operations will cover the blasting area with mattresses to prevent debris from falling on nearby properties.

**APPENDIX A**

**Application Fees**

Fees.

(a) Non-refundable Windmill Permit Application Fee. Every application for a Type 1A permit shall be accompanied by an application fee of fifty dollars (\$50) to be paid by a check made payable to the Town of Winter Harbor. Every application for a Type 1B, 2, type 3 windmill permit shall be accompanied by an application fee of five hundred dollars (\$500) to be paid by a check made payable to the Town of Winter Harbor.

(b) Windmill Non-Interest Bearing Escrow Account Deposit. Every application for a windmill permit shall also be accompanied by the payment of one thousand dollars (\$1000) per windmill or one hundred dollars (\$100) for each acre or fraction of an acre, whichever is greater. Measurement will be based upon the Municipal Tax Map or boundary survey, whichever is more current. The checks shall be made payable to the Town of Winter Harbor stating the purpose of the deposit. The Town Treasurer shall deposit the monies in a Non-Interest Bearing Escrow Account separate from any and all other municipal accounts. The account will be used to defer costs directly related to the efforts of the Planning Board and Municipal Officers to assure that the subdivision complies with these regulations, 30-A MRSA, Section 4404 as amended, and the ordinances of the Town of Winter Harbor. Such services may include, but are not limited to; clerical costs, consulting engineering fees, attorney fees, recording fees, and appraisal fees. The Town Treasurer will provide an account of the Windmill Non-interest Bearing Escrow Account to the applicant upon request.

(c) Refunds. If an applicant withdraws the windmill application within 30 days of initial application date, the Town shall refund all remaining monies in the Windmill Non-Interest Bearing Escrow Account. Upon a written request from the applicant the Town Treasurer shall refund all of the remaining monies in the account after payment of all costs and services related to the windmill and upon the windmill application denial or if approved, upon the windmill's completion and compliance with all the terms of these regulations, ordinances of the Town of Winter Harbor and conditions of approval of the windmill. The refund shall be accompanied by a final accounting by the Town Treasurer.

**APPENDIX B**

**Control of Noise**

Pursuant to section 14.1, noise emanating from a Type 2 Wind Energy Facility, a Type 3 Wind Energy Facility, or, upon written request of the Applicant pursuant to section 13.1, a Type 1A or Type 1B Wind Energy Facility, shall be controlled in accordance with the following provisions:

**A. Sound Level Limits**

**(1) Sound from Routine Operation of Facility.**

(a) Except as noted in subsections (b) and (c) below, the hourly sound levels resulting from routine operation of the facility and measured in accordance with the measurement procedures described in subsection F shall not exceed the following limits:

(i) At any property line of the facility site or contiguous property owned by the Applicant or Participating Land Owner(s), whichever is farther from the proposed facility's regulated sound sources:

75 dBA at any time of day.

(ii) At any Protected Location in an area for which the zoning, or, if unzoned, the existing use or use contemplated under a comprehensive plan, is not predominantly commercial, transportation, or industrial;

55 dBA between 7:00 a.m. and 7:00 p.m.  
(the "daytime hourly limit"), and  
45 dBA between 7:00 p.m. and 7:00 a.m.  
(the "nighttime hourly limit").

(iii) At any Protected Location in an area for which the zoning, or, if unzoned, the existing use or use contemplated under a comprehensive plan, is predominantly commercial, transportation, or industrial:

70 dBA between 7:00 a.m. and 7:00 p.m.  
(the "daytime hourly limit"), and  
60 dBA between 7:00 p.m. and 7:00 a.m.  
(the "nighttime hourly limit").

(iv) For the purpose of determining whether the use of an unzoned area is predominantly commercial, transportation, or industrial (e.g. non-residential in nature), the Codes Enforcement Officer shall consider the municipality's comprehensive plan, if any. Furthermore, the usage of properties abutting each Protected Location shall be determined, and the limits applied for that Protected Location shall be based upon the usage occurring along the greater portion of the perimeter of that parcel; in the event the portions of the perimeter are equal in



usage, the limits applied for that Protected Location shall be those for a Protected Location in an area for which the use is not predominantly commercial, transportation, or industrial.

- (v) When a proposed facility is to be located in an area where the daytime pre-developer ambient hourly sound level at a Protected Location is equal to or less than 45 dBA and/or the nighttime pre-development ambient hourly sound level at a Protected Location is equal to or less than 35 dBA, the hourly sound levels resulting from routine operation of the facility and measured in accordance with the measurement procedures described in subsection F shall not exceed the following limits at that Protected Location:

55 dBA between 7:00 a.m. and 7:00 p.m.  
(the "daytime hourly limit"), and  
45 dBA between 7:00 p.m. and 7:00 a.m.  
(the "nighttime hourly limit").

For the purpose of determining whether a Protected Location has a daytime or nighttime pre-development ambient hourly sound level equal to or less than 45 dBA or 35 dBA, respectively, the Applicant may make sound level measurements in accordance with the procedures in subsection F or may estimate the sound-level based upon the population density and proximity to local highways. If the resident population within a circle of 3,000 feet radius around a Protected Location is greater than 300 persons, or the hourly sound level from highway traffic at a Protected Location is predicted to be greater than 45 dBA in the daytime or 35 dBA at night, then the Applicant may estimate the daytime or nighttime pre-development ambient hourly sound level to be greater than 45 dBA or 35 dBA, respectively.

---

NOTE: Highway traffic noise can be predicted using the nomograph method of FHWA Highway Traffic Noise Prediction Model, FHWA-RD-77-108, December, 1978.

---

- (vi) Notwithstanding the above, the Applicant need not measure or estimate the pre-development ambient hourly sound levels at a Protected Location if he demonstrates, by estimate or example, that the hourly sound levels resulting from routine operation of the facility will not exceed 50 dBA in the daytime or 40 dBA at night.
- (b) If the Applicant chooses to demonstrate by measurement that the daytime and/or nighttime pre-development ambient sound environment at any Protected Location near the facility site exceeds the daytime and/or nighttime limits in subsection 1(a)(ii) or 1(a)(iii) by at least 5 dBA, then the daytime and/or nighttime limits shall be 5 dBA less than the measured daytime and/or nighttime pre-development ambient hourly sound level at the location of the measurement for the corresponding time period.
- (c) For any Protected Location near an existing facility, the hourly sound level limit for routine operation of the existing facility and all future expansions of that facility shall be the applicable hourly sound level limit of 1(a) or 1(b) above, or, at the Applicant's election, the existing hourly sound level from routine operation of the existing facility plus 3 dBA.
- (d) For the purposes of determining compliance with the above sound level limits, 5 dBA shall be added to the observed levels of any tonal sounds that result from routine operation of the facility.
- (e) When routine operation of a facility produces short duration repetitive sound, the following limit shall apply:

- (i) For short duration repetitive sounds, 5 dBA shall be added to the observed levels of the short duration repetitive sounds that result from routine operation of the facility for the purposes of determining compliance with the above sound level limits.
- (ii) For short duration repetitive sounds which the municipal entity responsible for review and approval of a pending application under section 9.1 determines, due to their character and/or duration, are particularly annoying or pose a threat to the health and welfare of nearby neighbors, 5 dBA shall be added to the observed levels of the short duration repetitive sounds that result from routine operation of the facility for the purposes of determining compliance with the above sound level limits, and the maximum sound level of the short duration repetitive sounds shall not exceed the following limits:
  - (a) At any Protected Location in an area for which the zoning, or, if unzoned, the existing use or use contemplated under a comprehensive plan, is not predominantly commercial, transportation, or industrial:  
  
65 dBA between 7:00 a.m. and 7:00 p.m., and  
55 dBA between 7:00 p.m. and 7:00 a.m.
  - (b) At any Protected Location in an area for which the zoning, or, if unzoned, the existing use or use contemplated under a comprehensive plan, is predominantly commercial, transportation, or industrial:  
  
75 dBA between 7:00 a.m. and 7:00 p.m., and  
65 dBA between 7:00 p.m. and 7:00 a.m.
  - (c) The methodology described in subsection 1(a)(iv) shall be used to determine whether the use of an unzoned area is predominantly commercial, transportation, or industrial.
  - (d) If the Applicant chooses to demonstrate by measurement that the pre-development ambient hourly sound level at any Protected Location near the facility site exceeds 60 dBA between 7:00 a.m. and 7:00 p.m., and/or 50 dBA between 7:00 p.m. and 7:00 a.m., then the maximum sound level limit for short duration repetitive sound shall be 5 dBA greater than the measured pre-development ambient hourly sound level at the location of the measurement for the corresponding time period.
  - (e) For any Protected Location near an existing facility, the maximum sound level limit for short duration repetitive sound resulting from routine operation of the existing facility and all future expansions and modifications of that facility shall be the applicable maximum sound level limit of (e)(ii)(a) or (e)(ii)(b) above, or, at the Applicant's election, the existing maximum sound level of the short duration repetitive sound resulting from routine operation of the existing facility plus 3 dBA.

---

**NOTE:** The maximum sound level of the short duration repetitive sound shall be measured using the fast response [ $L_{AFmax}$ ]. See the definition of maximum sound level.

---

**(2) Sound from Construction of a Facility**

- (a) The sound from construction activities between 7:00 p.m. and 7:00 a.m. is subject to the following limits:

- (i) Sound from nighttime construction activities shall be subject to the nighttime routine operation sound level limits contained in subsections 1(a) and 1(b).
  - (ii) If construction activities are conducted concurrently with routine operation of the facility, the combined total of construction and routine operation sound shall be subject to the nighttime routine operation sound level limits contained in subsections 1(a) and 1(b).
  - (iii) Higher levels of nighttime construction sound are permitted when a duly issued permit authorizing nighttime construction sound in excess of these limits has been granted by the Codes Enforcement Officer.
- (b) Sound from construction activities between 7:00 a.m. and 7:00 p.m. shall not exceed the following limits at any Protected Location:

| Duration of Activity | Hourly Sound Level Limit |
|----------------------|--------------------------|
| 12 hours             | 87 dBA                   |
| 8 hours              | 90 dBA                   |
| 6 hours              | 92 dBA                   |
| 4 hours              | 95 dBA                   |
| 3 hours              | 97 dBA                   |
| 2 hours              | 100 dBA                  |
| 1 hour or less       | 105 dBA                  |

- (c) All equipment used in construction on the facility site shall comply with applicable federal noise regulations and shall include environmental noise control devices in proper working condition, a originally provided with the equipment by its manufacturer.

**(3) Sound from Maintenance Activities**

- (a) Sound from routine, ongoing maintenance activities shall be considered part of the routine operation of the facility and the combined total of the routine maintenance and operation sound shall be subject to the routine operation sound level limits contained in subsection 1.
- (b) Sound from occasional, major, scheduled overhaul activities shall be subject to the construction sound level limits contained in subsection 2. If overhaul activities are conducted concurrently with routine operation and/or construction activities, the combined total of the overhaul, routine operation and construction sound shall be subject to the construction sound level limits contained in subsection 2.

**B. Submissions**

**(1) Facilities with Minor Sound Impact.**

An Applicant proposing facility with minor sound impact may choose to file, as part of the permit application, a statement attesting to the minor nature of the anticipated sound impact of their facility. An applicant proposing an expansion or modification of an existing facility with minor sound impact may follow the same procedure as described above. For the purpose of this ordinance, a facility or an expansion or modification of an existing facility with minor sound impact means a facility where the Applicant demonstrates, by estimate or example, that the regulated sound from routine operation of the facility will not exceed 5 dBA less than the applicable limits established under Section A. It is the intent of this subsection that an applicant need not conduct sound level measurements to

demonstrate that the facility or an expansion or modification of an existing facility will have a minor sound impact.

**(2) Other Facilities**

Technical information shall be submitted describing the Applicant's plan and intent to make adequate provision for the control of noise. The applicant's plan shall contain information such as the following, when appropriate:

- (a) Maps and descriptions of the land uses, local zoning and comprehensive plans for the area potentially affected by sounds from the facility.
- (b) A description of major sound sources, including tonal sound sources and sources of short duration repetitive sounds, associated with the construction, operation and maintenance of the proposed facility, including their locations within the proposed facility.
- (c) A description of the daytime and nighttime hourly sound levels and, for short duration repetitive sounds, the maximum sound levels expected to be produced by these sound sources at Protected Locations near the proposed facility.
- (d) A description of the Protected Locations near the proposed facility.
- (e) A description of proposed major sound control measures, including their locations and expected performance.
- (f) A comparison of the expected sound levels from the proposed facility with the sound level limits of this regulation. Expected sound levels shall be calculated with an acoustic model that conforms to International Standard ISO 9613-2, assuming simultaneous operation of all wind turbines and winter frozen-ground conditions. The acoustic modeling shall assume each turbine emits the maximum sound power level guaranteed by the manufacturer for all wind speeds including the uncertainty level (K-factor) to sound measurement uncertainty and turbine production uncertainty (IEC Technical Specification 61400-14).
- (g) The turbine sound power level frequency spectrum in 1/3 -octave bands.

**C. Terms and Conditions**

The municipal entity responsible for review and approval of the pending application under 9.1 may, as a term or condition of approval, establish any reasonable requirement to ensure that the Applicant has made adequate provision for the control of noise from the facility and to reduce the impact of noise on Protected Locations. Such conditions may include, but are not limited to, enclosing equipment or operations, imposing limits on hours of operation, or requiring the employment of specific design technologies, site design, modes of operation, or traffic patterns.

The sound level limits prescribed in this ordinance shall not preclude the municipal entity responsible for review and approval of the pending application under 9.1 from requiring an Applicant to demonstrate that sound levels from a facility will not unreasonably disturb wildlife or adversely affect wildlife populations in accordance with 12.2. In addition, the sound level limits shall not preclude the municipal entity responsible for review and approval of the pending application under 9.1, as a term or condition of approval, from requiring that lower sound level limits be met to ensure that the Applicant has made adequate provision for the protection of wildlife.

#### **D. Waiver from Sound Level Limits**

Winter Harbor Planning Board recognizes that there are certain facilities or activities associated with facilities for which noise control measures are not reasonably available. Therefore, the municipal entity responsible for review and approval of the pending application under section 9.1 may grant a waiver from any of the sound level limits contained in this ordinance upon (1) a showing by the Applicant that he or she has made a comprehensive assessment of the available technologies for the facility and that the sound level limits cannot practicably be met with any of these available technologies, and (2) a finding by the municipal entity responsible for review and approval of the pending application under section 9.1 that the proposed facility will not have an unreasonable impact on Protected Locations. In addition, a waiver may be granted by the municipal entity responsible for review and approval of the pending application under section 9.1 if (1) a facility is deemed necessary in the interest of national defense or public safety and the Applicant has shown that the sound level limits cannot practicably be met without unduly limiting the facility's intended function, and (2) a finding is made by the municipal entity responsible for review and approval of the pending application under section 9.1 that the proposed facility will not have an unreasonable impact on Protected Locations. The municipal entity responsible for review and approval of the pending application under section 9.1 shall consider the request for a waiver as part of the review of a completed permit application. In granting a waiver, the municipal entity responsible for review and approval of the pending application under section 9.1 may, as a condition of approval, impose terms and conditions to ensure that no unreasonable sound impacts will occur.

#### **E. Definitions**

Terms used herein are defined below for the purpose of this noise regulation.

- (1) **AMBIENT SOUND:** At a specified time, the all-encompassing sound associated with a given environment being usually a composite of sounds from many sources at many directions, near and far, including the specific facility of interest.
- (2) **CONSTRUCTION:** Activity and operations associated with the facility or expansion of the facility or its site.
- (3) **EMERGENCY:** An unforeseen combination of circumstances, which calls for immediate action.
- (4) **EMERGENCY MAINTENANCE AND REPAIRS:** Work done in response to an emergency.
- (5) **ENERGY SUM OF A SERIES OF LEVELS:** Ten times the logarithm of the arithmetic sum of the antilogarithms of one-tenth of the levels. [Note: See Section F(4.2).]
- (6) **EXISTING FACILITY:** A Wind Energy Facility legally constructed before the effective date of this ordinance or a proposed Wind Energy Facility for which the Application is found complete on or before the effective date of this ordinance. Any facility with an approved permit application which has been remanded to the municipal entity responsible for review and approval of the application under 9.1 by a court of competent jurisdiction for further proceedings relating to noise limits or noise levels prior to the effective date of this ordinance shall not be deemed an existing facility and the ordinance shall apply to the existing noise sources at that facility.
- (7) **EXISTING HOURLY SOUND LEVEL:** The hourly sound level resulting from routine operation of an existing facility prior to the first expansion that is subject to this ordinance.
- (8) **EQUIVALENT SOUND LEVEL:** The level of the mean-square A-weighted sound pressure during a stated time period, or equivalently the level of the sound exposure during a stated time period divided by the

duration of the period. (NOTE: For convenience, a one-hour equivalent sound level should begin approximately on the hour.)

- (9) **HISTORIC AREAS:** Historic sites administered by the Bureau of Parks and Lands of the Maine Department of Conservation, with the exception of the Arnold Trail.
- (10) **HOURLY SOUND LEVEL:** The equivalent sound level for one hour measured or computed in accordance with this ordinance.
- (11) **LOCALLY DESIGNATED PASSIVE RECREATION AREA:** Any site or area designated by Winter Harbor Planning Board for passive recreation that is open and maintained for public use and which:
- (a) Has fixed boundaries,
  - (b) Is owned in fee simple by Winter Harbor Planning Board or is accessible by virtue of public easement,
  - (c) Is identified and described in Winter Harbor Planning Board comprehensive plan, and
  - (d) Has been identified and designated at least nine months prior to submission of the Applicant's Wind Energy Facility permit application.
- (12) **MAXIMUM SOUND LEVEL:** Ten times the common logarithm of the square of the ratio of the maximum sounds to the reference sound of 20 micropascals. Symbol: LAFmax.
- (13) **MAXIMUM SOUND:** Largest A-weighted and fast exponential-time-weighted sound during a specified time interval. Unit: pascal (Pa).
- (14) **RESIDENCE:** A building or structure, including manufactured housing, maintained for permanent or seasonal residential occupancy providing living, cooking and sleeping facilities and having permanent indoor or outdoor sanitary facilities, excluding recreational vehicles, tents and watercraft.
- (15) **PRE-DEVELOPMENT AMBIENT:** The ambient sound at a specified location in the vicinity of a facility site prior to the construction and operation of the proposed facility or expansion.
- (16) **PROTECTED LOCATION:** any location that is:
- 1) Accessible by foot, on a parcel of land owned by a Non-Participating Landowner containing a Residence or planned Residence, or an approved residential subdivision, house of worship, academic school, college, library, duly licensed hospital or nursing home near the facility site at the time an application for a Wind Energy Facility permit is submitted under this ordinance; or
  - 2) Within a State Park, Baxter State Park, a National Park, a nature preserve owned by a land trust, the Maine Audubon Society or the Maine chapter of the Nature Conservancy, the Appalachian Trail, the Moosehorn National Wildlife refuge, a federally designated wilderness area, a state wilderness area designated by statute, a municipal park or a locally-designated passive recreation area, or any location within consolidated public reserve lands designated by rule by the Bureau of Public Lands as a Protected Location.

At Protected Locations more than 1000 feet from living and sleeping quarters within the above noted buildings or areas, the daytime hourly sound level limits shall apply regardless of the time of day.

Houses of worship, academic schools, libraries, State and National Parks without camping areas, Historic Areas, nature preserves, the Moosehorn National Wildlife Refuge, federally-designated

wilderness areas without camping areas, state wilderness areas designated by statute without camping areas, and locally-designated passive recreation areas without camping areas are considered protected locations only during their regular hours of operation.

Transient living accommodations are generally not considered Protected Locations; however, in certain special situations where it is determined by the municipal entity responsible for review and approval of the application under 9.1 that the health and welfare of the guests or the economic viability of the establishment will be unreasonably impacted, the municipal entity responsible for review and approval of the application under 9.1 may designate certain hotels, motels, campsites and duly licensed campgrounds as protected locations.

This term does not include buildings and structures located on leased camp lots, owned by the Applicant used for seasonal purposes.

For purposes of this definition, (1) a Residence is considered planned when the owner of the parcel of land on which the Residence is to be located has received all applicable building and land use permits and the time for beginning construction under such permits has not expired, and (2) a residential subdivision is considered approved when the developer has received all applicable land use permits for the subdivision and the time for beginning construction under such permits has not expired.

- (17) **ROUTINE OPERATION:** Regular and recurrent operation of regulated sound sources associated with the purpose of the facility and operating on the facility site.
- (18) **SHORT DURATION REPETITIVE SOUNDS:** A sequence of repetitive sounds which occur more than once within an hour, each clearly discernible as an event and causing an increase in the sound level of at least 6 dBA on the fast meter response above the sound level observed immediately before and after the event, each typically less than ten seconds in duration, and which are inherent to the process or operation of the facility and are foreseeable.
- (19) **SOUND COMPONENT:** The measurable sound from an audibly identifiable source or group of sources.
- (20) **SOUND LEVEL:** Ten times the common logarithm of the square of the ratio of the frequency-weighted and time-exponentially averaged sound pressure to the reference sound of 20 micropascals. For the purpose of this ordinance, sound level measurements are obtained using the A-weighted frequency response and fast dynamic response of the measuring system, unless otherwise noted.
- (22) **SOUND PRESSURE:** Root-mean-square of the instantaneous sound pressures in a stated frequency band and during a specified time interval. Unit: pascal (Pa).
- (23) **SOUND PRESSURE LEVEL:** Ten times the common logarithm of the square of the ratio of the sound pressure to the reference sound pressure of 20 micropascals.
- (24) **TONAL SOUND:** for the purpose of this ordinance, a tonal sound exists if, at a Protected Location, the one-third octave band sound pressure level in the band containing the tonal sound exceeds the arithmetic average of the sound pressure levels of the two contiguous one-third octave bands by 5 dB for center frequencies at or between 500 Hz and 10,000 Hz, by 8 dB for center frequencies at or between 160 and 400 Hz, and by 15 dB for center frequencies at or between 25 Hz and 125 Hz.

Additional acoustical terms used in work associated with this ordinance shall be used in accordance with the following American National Standards Institute (ANSI) standards:

ANSI S12.9-1988 - American National Standard Quantities and Procedures for Description and Measurements of Environmental Sound, Part 1;

ANSI S3.20-1973 - American National Standard Psychoacoustical Terminology;

ANSI S1.1-1960 - American National Standard Acoustical Terminology.

## **F. Measurement Procedures**

(1) **Scope.** These procedures specify measurement criteria and methodology for use, with applications, compliance testing and enforcement. They provide methods for measuring the ambient sound and the sound from routine operation of the facility, and define the information to be reported. The same methods shall be used for measuring the sound of construction and maintenance activities.

### **(2) Measurement Criteria**

#### **2.1 Measurement Personnel**

Measurements shall be supervised by personnel who are well qualified by training and experience in measurement and evaluation of environmental sound, or by personnel trained to operate under a specific measurement plan approved by the municipal entity responsible for review and approval of the pending application under 9.1.

#### **2.2 Measurement Instrumentation**

(a) A sound level meter or alternative sound level measurement system used shall meet all of the Type 1 or 2 performance requirements of American National Standard Specifications for Sound Level Meters, ANSI S1.4-1983.

(b) An integrating sound level meter (or measurement system) shall also meet the Type 1 or 2 performance requirements for integrating/averaging in the International Electrotechnical Commission Standard on Integrating-Averaging Sound Level Meters, IEC Publication 804 (1985).

(c) A filter for determining the existence of tonal sounds shall meet all the requirements of American National Standard Specification for Octave-Band and Fractional Octave-Band Analog and Digital Filters, ANSI S1.11-1986 for Order 3, Type 3-D performance.

(d) An acoustical calibrator shall be used of a type recommended by the manufacturer of the sound level meter and that meets the requirements of American National Standard Specification for Acoustical Calibrators, ANSI S1.40-1984.

(e) A microphone windscreen shall be used of a type recommended by the manufacturer of the sound level meter.

#### **2.3 Calibration**

(a) The sound level meter shall have been calibrated by a laboratory within 12 months of the measurement, and the microphone's response shall be traceable to the National Bureau of Standards.

(b) Field calibrations shall be recorded before and after each measurement period and at shorter intervals if recommended by the manufacturer.

#### **2.4 Measurement Location, Configuration and Environment**



- (a) Except as noted in subsection (b) below, measurement locations shall be at nearby Protected Locations that are most likely affected by the sound from routine operation of the facility.
- (b) For determining compliance with the 75 dBA property line hourly sound level limit described in subsection A(1)(a)(i), measurement locations shall be selected at the property lines of the proposed facility or contiguous property owned by the Applicant, as appropriate.
- (c) The microphone shall be positioned at a height of approximately 4 to 5 feet above the ground, and oriented in accordance with the manufacturer's recommendations.
- (d) Measurement locations should be selected so that no vertical reflective surface exceeding the microphone height is located within 30 feet. When this is not possible, the measurement location may be closer than 30 feet to the reflective surface, but under no circumstances shall it be closer than 6 feet.
- (e) When possible, measurement locations should be at least 50 feet from any regulated sound source on the facility.
- (f) Measurement periods shall be avoided when the local wind speed exceeds 12 mph and/or precipitation would affect the measurement results.

2.5 Measurement Plans. Plans for measurement of pre-development ambient sound or post-facility sound may be discussed with the Codes Enforcement Officer.

### **(3) Measurement of Ambient Sound**

#### **3.1 Pre-development Ambient Sound**

Measurements of the pre-development ambient sound are required only when the Applicant elects to establish the sound level limit in accordance with subsections A (1)(b) and A (1)(e)(ii)(d) for a facility in an area with high ambient sound levels, such as near highways, airports, or pre-existing facilities; or when the Applicant elects to establish that the daytime and nighttime ambient hourly sound levels at representative Protected Locations exceed 45 dBA and 35 dBA, respectively.

- (a) Measurements shall be made at representative Protected Locations for periods of time sufficient to adequately characterize the ambient sound. At a minimum, measurements shall be made on three different weekdays (Monday through Friday) during all hours that the facility will operate. If the proposed facility will operate on Saturdays and/or Sundays, measurements shall also be made during all hours that the facility will operate.
- (b) Measurement periods with particularly high ambient sounds, such as during holiday traffic activity, significant insect activity or high coastline waves, should generally be avoided.
- (c) At any measurement location the daytime and nighttime ambient hourly sound level shall be computed by arithmetically averaging the daytime and nighttime values of the measured one hour equivalent sound levels. Multiple values, if they exist, for any specific hour on any specific day shall first be averaged before the computation described above.

#### **3.2 Post-Facility Ambient Sound**

- (a) Measurements of the post-facility ambient one hour equivalent sound levels and, if short duration repetitive sounds are produced by the facility, the maximum sound levels made at nearby Protected

Locations and during representative routine operation of the facility that are not greater than the applicable limits of subsection C clearly indicate compliance with those limits.

- (b) Compliance with the limits of subsection A(l)(b) may also be demonstrated by showing that the post-facility ambient hourly sound level, measured in accordance with the procedures of subsection 3.1 above during routine operation of the facility, does not exceed the pre-development ambient hourly sound level by more than one decibel, and that the sound from routine operation of the facility is not characterized by either tonal sounds or short duration repetitive sounds.
  - (c) Compliance with the limits of subsection A(1)(e)(ii)(d) may also be demonstrated by showing that the post facility maximum sound level of any short duration repetitive sound, measured in accordance with the procedures of subsection 3.1 above, during routine operation of the facility, does not exceed the pre-development ambient hourly sound level by more than five decibels.
  - (d) .If any of the conditions in (a), (b) or (c) above are not met, compliance with respect to the applicable limits must be determined by measuring the sound from routine operation of the facility in accordance with the procedures described in subsection 4.
- (4) Measurement of the Sound from Routine Operation of Facility.

#### 4.1 General

- (a) Measurements of the sound from routine operation of facilities are generally necessary only for specific compliance testing purposes in the event that community complaints result from operation of the facility, for validation of an Applicant's calculated sound levels when requested by the municipal entity responsible for review and approval of the pending application under 9.1, for determination of existing hourly sound levels for an existing facility or for enforcement by the Codes Enforcement Officer.
- (b) Measurements shall be obtained during representative weather conditions when the facility sound is most clearly noticeable. Preferable weather conditions for sound measurements at distances greater than about 500 feet from the sound source include overcast days when the measurement location is downwind of the facility and inversion periods (which most commonly occur at night).
- (c) Measurements of the facility sound shall be made so as to exclude the contribution of sound from facility equipment that is exempt from this regulation.

#### 4.2 Measurement of the Sound Levels Resulting from Routine Operation of the Facility.

- (a) When the ambient sound levels are greater than the sound level limits, additional measurements can be used to determine the hourly sound level that results from routine operation of the facility. These additional measurements may include diagnostic measurements such as measurements made close to the facility and extrapolated to the Protected Location, special checkmark measurement techniques that include the separate identification of audible sound sources, or the use of sound level meters with pause capabilities that allow the operator to exclude non-facility sounds.
- (b) For the purposes of computing the hourly sound level resulting from routine operation of the facility, sample diagnostic measurements may be made to obtain the one hour equivalent sound levels for each sound component.
- (c) Identification of tonal sounds produced by the routine operation of a facility for the purpose of adding the 5-dBA penalties in accordance with subsection A (l)(d) requires aural perception by the measurer, followed by use of one-third octave band spectrum analysis instrumentation. If one or more of the sounds of routine operation of the facility are found to be tonal sounds, the hourly sound level

component for tonal sounds shall be computed by adding 5 dBA to the one hour equivalent sound level for those sounds.

- (d) Identification of short duration repetitive sounds produced by routine operation of a facility require careful observations. For the sound to be classified as short duration repetitive sound, the source(s) must be inherent to the process or operation of the facility and not the result of an unforeseeable occurrence. If one or more of the sounds of routine operation of the facility are found to be short duration repetitive sounds, the hourly sound level component for short duration repetitive sounds shall be computed by adding 5 dBA to the one hour equivalent sound level for those sounds. If required, the maximum sound levels of short duration repetitive sounds shall be measured using the fast response [LAFmax]. The duration and the frequency of occurrence of the events shall also be measured. In some cases, the sound exposure levels of the events may be measured. The one hour equivalent sound level of a short duration repetitive sound may be determined from measurements of the maximum sound level during the events, the duration and frequency of occurrence of the events, and their sound exposure levels.
  - (e) The daytime or nighttime hourly sound level resulting from routine operation of a facility is the energy sum of the hourly sound level components from the facility, including appropriate penalties, (see (c) and (d) above). If the energy sum does not exceed the appropriate daytime or nighttime sound level limit, then the facility is in compliance with that sound level limit at that Protected Location.
- (5) Reporting Sound Measurement Data. The sound measurement data report should include the following:
- (a) The dates, days of the week and hours of the day when measurements were made.
  - (b) The wind direction and speed, temperature, humidity and sky condition.
  - (c) Identification of all measurement equipment by make, model and serial number.
  - (d) The most recent dates of laboratory calibration of sound level measuring equipment.
  - (e) The dates, times and results of all field calibrations during the measurements.
  - (f) The applicable sound level limits, together with the appropriate hourly sound levels and the measurement data from which they were computed, including data relevant to either tonal or short duration repetitive sounds.
  - (g) A sketch of the site, not necessarily to scale, orienting the facility, the measurement locations, topographic features and relevant distances, and containing sufficient information for another investigator to repeat the measurements under similar conditions.
  - (h) A description of the sound from the facility and the existing environment by character and location.

**APPENDIX C**

**Decommissioning Plan**

Pursuant to section 14.12, the Applicant shall provide a plan for decommissioning a Type 2 or Type 3 Wind Energy Facility. The decommissioning plan shall include, but shall not be limited to the following:

C.1 The Owner/operator shall, at its expense, complete decommissioning of the Wind Turbine within:

- 1). twelve (12) months after the end of the useful life of the Wind Turbine, or; 2) as specified in the materials provided at the time of application. The Wind Turbine will be presumed to be at the end of its useful life if no electricity is generated for a continuous period of twelve (12) months.

C.2 Decommissioning shall include removal of wind turbines and foundations to a depth of 36 inches. All buildings, cabling, electrical components, roads, and any other associated facilities shall be removed unless, at the end of the Wind Turbine's useful life, as determined in accordance with Section C.1, the Applicant provides written evidence of plans for continued beneficial use of these components of the Wind Turbine and this evidence is approved by the Planning Board.

C.3 Except as otherwise provided by Section 2, disturbed earth shall be graded and re-seeded unless the Participating Landowner of the affected land requests otherwise in writing.

C.4 An independent and certified Professional Engineer shall be retained to estimate the total cost of decommissioning without regard to salvage value of the equipment ("Decommissioning Costs"), and may take such measures the cost of decommissioning including the salvage value of the equipment ("Net Decommissioning Costs"). Said estimates shall be submitted to the Town of Winter Harbor after the first year of operation and every other year thereafter.

C.5 The Owner/operator shall post and maintain decommissioning funds in an amount equal to Net Decommissioning Costs; provided that at no point shall decommissioning funds be less than one hundred (100%) of Decommissioning Costs. The decommissioning funds shall be posted and maintained with a bonding company of Federal or State-chartered lending institution chosen by the Owner/operator and Participating Landowners posting the financial security, provided that the bonding company or lending institution is authorized to conduct such business within the State and is approved by the Town of Winter Harbor. No work can begin on the Wind Turbine before the decommissioning bond is issued and approved.

C.6 Decommissioning funds may be in the form of a performance bond, surety bond, letter of credit or other form of financial assurance as may be acceptable to the Town of Winter Harbor.

C.7 If the Owner/operator fails to complete decommissioning within the period prescribed by Section C.1, then the Participating Landowner shall have an additional six (6) months to complete decommissioning.

C.8 If neither the Owner/operator, nor the Participating Landowner completes decommissioning within the periods prescribed by Sections C.1 and C.7, the Wind Turbine shall be deemed to be in violation of this Ordinance and the Town of Winter Harbor as necessary, including court action, to ensure the completion of decommissioning. The entry into and submission of evidence of a Participating Landowner agreement to the Town of Winter Harbor shall constitute agreement and consent of the Parties to the agreement, their respective heirs,

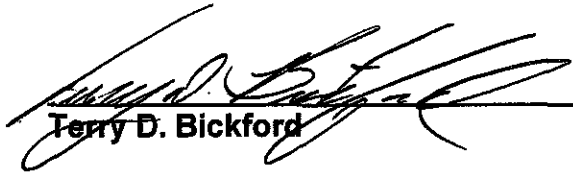
successors and assigns that the Town of Winter Harbor may take such action as necessary to implement the decommissioning plan.


C.9 The escrow agent shall release the decommissioning funds when the Owner/operator has demonstrated and the Enforcement Authority concurs that the decommissioning has been satisfactorily completed, or upon written approval of the Town in order to implement the decommissioning plan.


**WINTER HARBOR WIND ENERGY FACILITY ORDINANCE**

Ordinance adopted and accepted on **June 15, 2011**.

**Board of Selectmen**

  
\_\_\_\_\_  
Terry D. Bickford

  
\_\_\_\_\_  
Benjamin G. Newman

  
\_\_\_\_\_  
Larry D. Smith, Jr.

