2018

Town of Harpswell Maine Ordinances

Harpswell, Me.

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HARPSWELL ANIMAL CONTROL ORDINANCE
Enacted March 16, 1985 Article 25
Amended March 28, 1987 Article 34
Amended March 12, 1994 Article 61
Amended March 20, 2010 Article 4
Amended March 12, 2011 Article 17

SEC. 101 PURPOSE
The purpose of this Ordinance is to require, in accordance with Title 7 M.R.S.A. Part 9, that all dogs in the Town of Harpswell be kept under the control of their owners at all times so that they will not injure persons, damage property, or create a nuisance.

SEC. 102 CONSTRUCTION
The provisions that apply to the owner of a dog apply equally to any person having its custody or possession.

SEC. 103 DEFINITIONS
103.1 “Owner” means any person or organization that owns, possesses, or has custody of a dog.
103.2 “At large” means off the premises of the owner or person charged with the responsibility of control.
103.3 “Nuisance” means the causing of unreasonable noise, smell, litter, or other property damage; the chasing of automobiles, motorcycles, bicycles or other vehicles; the persistent or frequent entry on school grounds while school is in session.
103.4 “Dangerous dog” means a dog that has bitten a person who was not a trespasser with criminal intent on the owner’s premises at the time of the incident; a dog that causes serious injury or death to another animal; or a dog that causes reasonable fear of bodily injury to a person acting in a peaceable manner outside the owner’s premises.
103.5 “Owner’s control” means that the dog is within 100 yards of its owner or that the owner can demonstrate command of the dog to an enforcement officer if requested.

SEC. 104 REGISTRATION AND IDENTIFICATION
Each owner or keeper of a dog that is six months of age or over, except dogs kept under a kennel license as provided by Title 7 M.R.S.A. Part 9, shall on or before January 1, annually, or at such time as such dog becomes six months old, cause such dog to be licensed with the Town Clerk. A dog that is at least two months old must wear a collar or harness to which is attached an identification tag with the owner’s name and address or telephone number.
After January 31, the Animal Control Officer shall notify all owners of unlicensed dogs that they are subject to a late fee pursuant to 7 M.R.S.A. § 3923-A (4), as may be amended from time to time, and an administrative fee in such amount as the Board of Selectmen may from time to time establish by Board of Selectmen order, and that their dogs must be licensed by July 31 or they shall face court action.

SEC. 105 RUNNING AT LARGE
A dog is not permitted to run at large. A dog that is off the premises of the owner or the premises of a person having its custody and is not on a leash, or is on a leash exceeding twelve feet in length, is prima-facie evidence of the unlawful running at large of such dog.

105.1 Exception. A dog that is under owner’s control or is engaged in field trials, training or legal hunting may run at large.

SEC. 106 DANGEROUS DOG
It shall be unlawful to own or possess a dangerous dog as defined in Section 103, except when such dangerous dog is confined or muzzled.

SEC. 107 NUISANCE DOG
It shall be unlawful to own or possess a dog creating a nuisance as defined under Section 103.

SEC. 108 IMPOUNDING
The Animal Control Officer shall apprehend any dog found running at large and impound it in the humane society or other suitable place. As soon thereafter as practical, he or she shall provide to the humane society and the Town Clerk’s Office the following information, if known: breed, color, sex, license number, and name and address or telephone number of the owner.

SEC. 109 REFUSING TO RECLAIM DOG
It is unlawful for a person to fail or refuse to reclaim his dog and pay the cost required by Section 110 within one week after receiving oral or written notice of its impoundment.

SEC. 110 NOTICE AND RECLAMATION
The Animal Control Officer shall immediately notify the owner, by telephone or by certified mail that the dog has been impounded, and that he or she may reclaim it by licensing the dog if it is unlicensed, and by paying the Town the following fee:

110.1 Impoundment fee in such amount as the Board of Selectmen may from time to time establish by Board of Selectmen order.
SEC. 111  DISPOSITION OF UNCLAIMED DOG

All impounded dogs shall be kept at the humane society shelter for six days. If the owner has not reclaimed the dog within that time, and if it has not been placed with another owner, the humane society shall become the owner of the dog.

SEC. 112  DISPOSITION OF DOGS THAT HAVE BITTEN PERSONS

The owner of a dog who knows or has been advised that their dog has bitten a person shall be notified by the Animal Control Officer that the dog must be confined at home or at the humane society, at the owner’s expense, for at least ten consecutive days. The Animal Control Officer shall notify the Health Officer immediately of the time, place, and reason for the confinement. During the period of confinement, the owner shall not destroy the dog nor allow it to be destroyed.

SEC. 113  EXAMINATION OF CONFINED DOGS

The Animal Control Officer shall have a dog that has been confined because of having bitten a person kept under observation for symptoms of rabies. At the end of the 10-day period of confinement, the Animal Control Officer shall determine whether the dog is infected with rabies. In making this determination, he or she shall employ such expert assistance as may be necessary. If he or she deems it necessary to keep the animal confined for longer than the 10-day period, he or she shall order it done. If the dog is found to be rabid, he or she shall notify the owner and the person bitten, and shall have the dog destroyed immediately, following any procedure recommended by the Department of Human Services. If the dog is not rabid, the owner shall thereafter muzzle the dog or keep it confined. All expenses incurred by the Town in carrying out the procedure provided by this section shall be paid for by the owner of the dog.

SEC. 114  PENALTIES

The following penalties apply:

114.1 Running at Large. The owner of a dog that is found running at large shall be punished by a fine consistent with 7 M.R.S.A. § 3915, as may be amended from time to time. For the second and subsequent offenses, the owner shall be punished by a fine consistent with 7 M.R.S.A. § 3915, as may be amended from time to time.

114.2 Running at Large After Causing Nuisance. The owner of a dog that is found running at large who knows or has been advised that the dog has caused a nuisance and has failed to keep the dog on his premises or under his control or under the control of a person charged with the responsibility, shall, for the first offense, be punished by a fine as provided under Section 114.1. For second and subsequent offenses, the owner shall be punished by a fine as provided under Section 114.1.

114.3 Disturbing the Peace/Barking Dog. The owner of a dog that disturbs the peace of any person by frequently and habitually barking, howling, or
creating other noise shall be punished, on the first offense, by a fine in such amount as the Board of Selectmen may from time to time establish by Board of Selectmen order. For second and subsequent offenses, the owner shall be punished by a fine in such amount as the Board of Selectmen may from time to time establish by Board of Selectmen order.

114.4 **Dangerous Dogs.** If a dog that is required to be muzzled under Section 106 is allowed to go unconfined without a muzzle, the owner shall be punished by a fine consistent with 7 M.R.S.A. § 3952, as may be amended from time to time.

114.5 **Nuisance Dog.** The owner of a dog that is found to be a nuisance shall be punished, on a first offense, by a fine in such amount as the Board of Selectmen may establish. For second and subsequent offenses, the owner shall be punished by a fine in such amount as the Board of Selectmen may from time to time establish by Board of Selectmen order.

114.6 **General Penalty.** A person who violates any provision of this Ordinance other than those set forth in Section 110 and Section 114.1 through 114.5 shall be punished by a fine in such amount as the Board of Selectmen may from time to time establish by Board of Selectmen order.

SEC. 115  **USE OF FEES AND FINES**

The Town shall keep the portions of fees and fines retained by it in a separate dedicated account that must be used for the salaries and costs of animal control, licensing, law enforcement, care of injured or abandoned stray animals and the support of one or more approved animal shelters. Any money remaining in the account at the end of the Town’s fiscal year does not lapse, but shall be carried over to the next fiscal year.

SEC. 116  **ENFORCEMENT**

Except for the provisions required to be enforced by the Health Officer, the Animal Control Officer shall enforce this Ordinance.

SEC. 117  **SEVERABILITY**

To the extent any provision of this Ordinance is deemed invalid by a court of competent jurisdiction, the balance of the Ordinance shall remain valid.
Section 1. **TITLE:** This Ordinance shall be known as the Town of Harpswell Bethel Point Town Landing Parking Ordinance.

Section 2. **PURPOSE AND AUTHORITY:** The purpose of this Ordinance is to regulate the use of available parking for residents and visitors to the Bethel Point Town Landing. This Ordinance is enacted by the municipal officers under the authority of MRS Title 30-A §3009.

Section 3. **PERMIT PROCEDURE:** Any resident or visitor requesting to park at the Bethel Point Town Landing may be issued a designated space parking permit, subject to annual availability. Limited parking spaces are available on a first come, first issued basis. Permits may be issued by the municipal officers according to the following priority:

A. **Property Owner Permits for the season:** For persons who own property on the islands of Big Yarmouth, Little Yarmouth, Pine and George, up to 7 property owner permits may be issued on an annual basis.
   1. Permit cost will be $25.00 per vehicle
   2. Permit expires December 31st of the given issuance year.
   3. Property ownership must be confirmed in the Town records.
   4. One permit per property may be issued.
   5. Property owners will have until June 1st, of the given year, to obtain these priority permits.

B. **Temporary Permit:** For all remaining parking permits, including those not issued under Section 3.A, Temporary Permits may be issued as follows:
   1. Temporary Permits: Each permit will be issued for up to 14 days on a first come, first issued basis.
   2. Cost: The cost of a Temporary Permit will be $5.00 per vehicle.
   3. Date Eligibility: A Temporary Permit may be obtained after June 1st of the given year of issuance.
   4. Expiration: A Temporary Permit is valid for a period not to exceed 14 days from issue date. Expiration day will be entered on each permit.
   5. Parking Availability: Parking will be based only on availability of spaces.

C. **Handicapped Parking Permit:** There shall be at least one designated handicapped parking space.
   1. The handicapped parking permit shall meet the requirements for the temporary permit.
   2. Applicant must have proof of handicap parking status at time of permit request.
   3. The Town may issue a handicapped parking permit at any time.

Section 4. **PERMIT FREE PARKING:** The remaining spaces shall be available for parking on a first come, first serve basis at the discretion of the municipal officers.

Section 5. **PARKING SPACES:** The municipal officers may amend the number, location and type of available parking spaces on an as needed basis. Signage at the site will indicate the areas requiring permits and the areas not requiring permits.

Section 6. **UNAUTHORIZED PARKING:** No person may park a trailer under this ordinance. No person may park a motor vehicle at the designated permit parking area at Bethel Point Town Landing without a permit issued by the municipal officers or employees. Parking is restricted to the east side of Bethel Point Road at or near the Town Landing in the Designated Permit Parking areas or Permit Free Parking Areas only.
Section 7. **AUTHORITY TO TOW AND IMPOUND.** Any illegally parked motor vehicle at Bethel Point Town Landing may be towed. Those persons authorized to enforce this Ordinance are authorized to order the removal and impounding of any motor vehicle parked at Bethel Point Town Landing in violation of this Ordinance by a Tow Operator on the Towing List.

A. **TOWING LIST.** The Town Administrator is authorized to approve Tow Operators who meet the objective standards set forth in Sections B, C and D herein to be listed on the Towing List. The Town Administrator shall remove Tow Operators who fail, on a single incident basis and/or a continuing basis, to meet the objective standards set forth in Sections B, C and D herein from the Towing List. Notice of any changes to the Towing List shall be provided to the affected Tow Operator(s) and those persons authorized to enforce this Ordinance.

B. **APPROVED FACILITIES.** Every Tow Operator on the Towing List shall provide and maintain a facility for the storage of vehicles. Such facilities shall be within 15 miles of the limits of the Town of Harpswell. All motor vehicles towed under the provisions of this Agreement shall be stored within the facility maintained by each Tow Operator.

C. **TOW OPERATOR INSURANCE AND INDEMNIFICATION REQUIREMENTS.** Every Tow Operator on the Towing List shall maintain, at its own expense, and provide a copy to the Town, such policies of insurance as follows:

   (1) Commercial liability policy covering the operation of the Tow Operator’s business, equipment or other motor vehicles for any bodily injury or property damage. This policy shall be in the minimum amount of Four Hundred Thousand Dollars ($400,000.00) combined single limit for personal injury and property damage, or such other amount as may be required by the Maine Tort Claims Act (14 M.R.S. § 8001 et seq.), as amended from time to time, whichever amount shall be greater.

   (2) The lapsing or cancellation of any policy as required herein shall result in the automatic removal of the Tow Operator from the Towing List without any action on the part of the Town.

   (3) Tow Operators shall defend, indemnify and hold the Town harmless from all claims for damages to property and injuries to persons resulting from the Tow Operator’s negligence or intentional misconduct in the towing or storage of vehicles pursuant hereto.

D. **TOW OPERATOR SERVICE CHARGES.** The maximum rates for services performed by Tow Operators on the Towing List pursuant to this Ordinance shall be as follows:

   (a) Tows: $85.00 per tow.

   (b) Storage fee: $30.00 per 24 hour day, which begins to accrue after the vehicle is towed.

   (c) Vehicle release fee: When an owner requests release of the vehicle during night, weekend or holiday release hours as defined herein, an additional charge of $25.00 may be assessed. If a vehicle is released outside of night, weekend or holiday release hours as defined herein, no charge shall be assessed for the release.

   (d) Minimal call out fee: In the event that a Tow Operator has been requested to perform service and, upon arrival at the scene, towing services are no longer required, a $15.00 fee may be assessed if call out is outside of night, weekend or holiday release hours as defined herein and a $20.00 fee may be assessed if call out is during night, weekend or holiday release hours as defined herein.

   (e) The municipal officers may amend the fees cited in this Section on an annual basis, provided that any altered fees shall be posted on Town’s website.
E. **NOTIFICATION TO OWNERS.** Within 24 hours from the time of the authorized removal of any motor vehicle granted by this Ordinance, notice of the fact that the motor vehicle has been impounded shall be sent by a person authorized to enforce this Ordinance to the owner of record of that motor vehicle. Such notice shall be sent by regular first-class mail and shall contain the following information:

   (a) registration number and a brief description of the motor vehicle;
   (b) name and address of person or company who performed the tow;
   (c) location from which the motor vehicle was removed;
   (d) location where the motor vehicle is stored and may be claimed;
   (e) the provisions of the Ordinance that were violated and led to the tow; and
   (f) the maximum towing, storage and release fees pursuant to this Ordinance.

Any person seeking release of a motor vehicle towed pursuant to this Ordinance must first (a) pay all towing, storage and release fees; and (b) present satisfactory evidence of his or her right to possession and sign a receipt for the motor vehicle.

If any motor vehicle has not been claimed, the Tow Operator shall comply with the procedures set forth in 29-A M.R.S. §§ 1851-1861, Abandoned Vehicles, as may be amended from time to time. In the event of an unclaimed or abandoned vehicle, the Town Operator’s sole remedy shall be as outlined in said State statute.

F. **RECORDS OF MOTOR VEHICLES TOWED.** The Town’s duly authorized law enforcement provider shall keep a record of all motor vehicles towed and impounded and shall be able at all reasonable times to furnish the owners or agents of the owners thereof with information as to the place of storage of such motor vehicles.

G. **LIABILITY FOR FINE OR PENALTY.** The payment of towing, storage and release fees to the Tow Operator shall not operate to relieve the owner or operator of any motor vehicle from liability for any fine or penalty for the violation of any law or ordinance on account of which the motor vehicle was towed and impounded.

H. **UNLAWFUL REDEMPTION.** No person shall move a motor vehicle after it has been towed to an approved facility without payment of all applicable towing, storage and release fees.

I. **FINES AND PENALTIES.** A violation of this Ordinance is a civil violation punishable by a fine of Fifty Dollars ($50.00). Whoever moves a motor vehicle after it has been towed to an approved facility without payment of the towing, storage and release fees shall be subject to a fine of One Hundred Dollars ($100.00) for the first offense and Two Hundred Dollars ($200.00) for each subsequent offense.

Section 8. **ENFORCEMENT.** This Ordinance may be enforced by any law enforcement provider duly authorized by the Town or any person specifically authorized by formal vote of the Board of Selectmen to enforce this Ordinance.

Section 9. **EFFECTIVE DATE:** This Ordinance shall become effective when enacted by the municipal officers after seven (7) days' notice of the meeting at which the Ordinance is to be considered; and shall replace the Town of Harpswell Bethel Point Town Landing Parking Ordinance in its entirety.

Section 10. **SEVERABILITY:** Should any section of the Ordinance be found invalid, it will not affect the validity of any other section.
Town of Harpswell

Blasting Ordinance

As Adopted March 20, 2010
Amended March 12, 2011
# Blasting Ordinance

## Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1. Purpose</td>
<td>3</td>
</tr>
<tr>
<td>Section 2. Definitions</td>
<td>3</td>
</tr>
<tr>
<td>Section 3. Permit Required</td>
<td>3</td>
</tr>
<tr>
<td>3.4 Fees</td>
<td>4</td>
</tr>
<tr>
<td>3.5 Proof of Insurance</td>
<td>4</td>
</tr>
<tr>
<td>3.6 Effective Period</td>
<td>4</td>
</tr>
<tr>
<td>Section 4. Performance Standards</td>
<td>4</td>
</tr>
<tr>
<td>4.1 Hours of Blasting</td>
<td>4</td>
</tr>
<tr>
<td>4.2 Water Quality and Quantity Protection</td>
<td>4</td>
</tr>
<tr>
<td>Section 5. Notices Required Following Issuance of a Permit</td>
<td>5</td>
</tr>
<tr>
<td>Section 6. Exceptions</td>
<td>6</td>
</tr>
<tr>
<td>Section 7. Severability</td>
<td>6</td>
</tr>
<tr>
<td>Section 8. Enforcement and Penalties</td>
<td>6</td>
</tr>
<tr>
<td>Section 9. Conflicts with Other Ordinances</td>
<td>6</td>
</tr>
<tr>
<td>Section 10. Authority</td>
<td>6</td>
</tr>
<tr>
<td>Section 11. Amendments</td>
<td>6</td>
</tr>
<tr>
<td>Section 12. Effective Date</td>
<td>6</td>
</tr>
</tbody>
</table>
Section 1. Purpose

1.1 The purpose of this ordinance is to minimize the effects of airblast overpressure, ground vibration, dust and noise associated with blasting which may be detrimental to individuals and the community in the enjoyment of life, property and the conduct of business through the establishment of standards and notice requirements of blasting operations.

1.2 It is also the intent of this ordinance to prevent permanent damage to the geologic, hydrogeologic and wildlife resources and ecological balance in the region and to have a process which can be effectively and efficiently administered without causing undue financial and administrative hardship to blasting operators.

Section 2. Definitions

Airblast - An airborne shock wave resulting from detonation of explosives. "Airblast" may be caused by burden movement or the release of expanding gas into the air. "Airblast" may or may not be audible.

Applicant - The person, company or corporation responsible for managing and conducting blasting operations.

Blast/Blasting - Any activity entailing the use of explosives for the purpose of producing an explosion to demolish structures or to fragment rock for mining, quarrying, excavation and construction.

Blasting Operations - Drilling and site preparation solely for blasting and detonation.

Explosives - Any substance, chemical compound or mechanical mixture that is commonly used for the purpose of producing an explosion to fragment rock for mining, quarrying, excavation and construction. Initiating devices (detonators, detonating cords, etc.) are also included under this definition.

Ground Vibrations - A shaking of the ground caused by the blast wave emanating from a blast.

Seismograph - An instrument that measures and may supply a permanent record of earthborn vibration induced by blasting.

Section 3. Permit required

A permit shall be obtained from the Code Enforcement Officer prior to any blasting with explosive devices or materials for development purposes within the boundaries of the Town of Harpswell.

3.1 Application forms for a permit may be obtained in the Code Enforcement Office. Permits for blasting will be reviewed as follows:

(a) Any removal of a total of 300 cubic yards or less of material per project will be reviewed and approved by the Code Enforcement Officer following consultation with the Town Planner; or

(b) Permits for blasting and removal of more than 300 cubic yards of material total per project must be reviewed and approved by the Planning Board. For the purposes of this section, the "project" shall include all blasting anticipated to be undertaken during the completion of a contract or series of contracts, for demolition, excavation or construction,
or during the anticipated life of a quarry operation. Applications for the Planning Board shall be transmitted to the Planning Board for review at its next available meeting.

3.2 All applications shall contain the following information:
(a) The name of the applicant
(b) The name of the property owner
(c) The general contractor
(d) The location(s) of the proposed blasting activity
(e) The total number of cubic yards of material estimated to be removed by blasting
(f) An estimate of the number of blasts required to remove the specified amount of material
(g) Hours and dates of proposed blasting activity
(h) The following studies or information shall be included:
   1) Preblast assessments, to include:
      a. interior and exterior inspections of structures located within a 250 ft. radius of the blasting location (contingent upon owner agreement) and;
      b. water samples from wells located within a 250 ft. radius of the blasting location (contingent upon owner agreement)
   2) Seismograph record of each blast
   (i) Proof that the entity applying for the Town’s blasting permit has a permit to use explosives as issued by the State of Maine Fire Marshall’s Office.

3.3 Upon receipt of a completed application, the Code Enforcement Officer shall review and act upon the application within ten (10) days. Failure to do so shall not be deemed an approval of the permit application.

3.4 Fees. All applications for blasting permits shall be accompanied by a fee as set from time to time by Board of Selectmen order.

3.5 Proof of Insurance. The applicant and/or the blasting contractor shall present proof of liability insurance in a minimum amount of $1,000,000 combined single limit per occurrence.

3.6 Effective Period. Permits shall be effective for no more than 365 days from the date of approval. For blasting operations the scope of which exceeds one year, renewal of the permit shall be accomplished by reapplying in accordance with the procedure for a new permit, except that a public hearing may be held to review past compliance with the standards contained herein and any effects on existing uses and property owners in the vicinity of such blasting operations.

Section 4. Performance Standards

4.1 Hours of Blasting. Hours of blasting shall be limited to daylight hours, no earlier than 8:00 a.m. or later than 7:00 p.m., Monday through Friday inclusive. Detonation of misfires may occur outside of these times but must be reported to the Code Enforcement Officer in accordance with Section 5 of this Ordinance. Blasting shall be prohibited on the following legal holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas.

4.2 Water Quality and Quantity Protection. Water is a precious resource and measures shall be taken to protect groundwater quality and quantity.
(a) The Code Enforcement Officer may require monitoring of groundwater quality and quantity to assure no adverse impacts to any water supplies or wells within 500 feet of the blasting location.

(b) The Code Enforcement Officer may require monitoring of groundwater quality. No blasting activity shall increase turbidity in the ground water to more than which existed prior to the blasting, as established in a preblast survey, if such survey has been completed.

(c) If groundwater contains an increase in turbidity, then the applicant shall demonstrate how water quality will be improved or treated, if necessary.

(d) The Code Enforcement Officer may require monitoring of groundwater quantity. No blasting activity shall decrease the quantity of ground water to less than what existed prior to the blasting, as established in a preblast survey, if such survey has been completed.

(e) If groundwater contains a decrease in quantity, then the applicant shall demonstrate how water quantity will be improved, if necessary.

4.3 Ground vibrations, air blast overpressure and seismographic records shall comply with 38 M.R.S.A. § 490-Z (14) (B), (C), (I), (J), (K), (L) and (M), as may be amended from time to time.

Section 5. Notices Required Following Issuance of a Permit

5.1 Any person intending to detonate explosives shall first notify the Code Enforcement Officer or his duly authorized representative that a blast is planned. Such notification shall be received at least 24 hours prior to the planned detonation and shall give the time (within two hours), location where the blasting is to be done, the amount of explosives to be used and the name and business address of the person responsible for the blasting operation. The notification may be given orally over the telephone; however, the burden of proof as to whether the notification was in fact received rests with the person responsible for the blasting operation.

5.2 The person responsible for a blast shall notify the Code Enforcement Officer in the event of any misfires and the proposed corrective action within five (5) business days of the misfire.

5.3 At least ten (10) days prior to the intended date of the commencement of the blasting, the person responsible for the blast shall inform all property owners within 500 feet of the blasting location. Such notification stating the purpose, warning procedures, date and time of the blast shall be given by first class mail and certified mail. Evidence that such notification was sent shall be provided to the Code Enforcement Officer upon request. Failure of a property owner to receive the required notice does not invalidate the blasting permit.

5.4 If an abutter does not respond to an applicant’s notification within eight (8) days of sending notice, then the applicant may proceed with blasting. A receipt of certified mailing shall constitute proof of sending notice.

5.5 Prior to any blast, the person responsible for the blast shall publish notice of the date, time and place of the blast in a local newspaper of general circulation and provide a copy of the notice to the local cable channel.
5.6 The person responsible for the blast shall place warning signs along property lines of the blasting site at least seven (7) days in advance.

Section 6. Exceptions
Applications for a permit for an exception from the performance standards designated in this ordinance may be made to the Code Enforcement Officer, on the basis of hardship or emergency. Any permit granted hereunder shall contain all conditions upon which said permit has been granted and shall specify a reasonable time that the permit shall be effective.

A. The Code Enforcement Officer may grant the exception as applied for only if:
   (1) The activity or operation will be of a temporary duration, i.e., a limited number of blasts at a specific site, and only if it cannot be done in a manner that would comply with this ordinance;
   (2) No other reasonable alternative is available to the applicants; and
   (3) The applicants represent, and the Code Enforcement Officer finds, that blasting as permitted will not violate recognized safety standards.

B. Upon the issuance of any exception permit, the Code Enforcement Officer may prescribe any reasonable conditions or requirements he deems necessary to minimize adverse effects upon the community.

Section 7. 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.

Section 8. Enforcement and Penalties
It shall be the duty of the Code Enforcement Officer to administer and enforce the provisions of this Ordinance. Any person, including but not limited to a landowner, a landowner's agent, or contractor who orders or conducts any activity in violation of this Ordinance shall be penalized in accordance with 30-A, M.R.S.A. § 4452, as may be amended from time to time. For purposes of this Section, each day that a violation continues shall be considered a separate offense.

Section 9. 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 10. Authority
This Ordinance is adopted under powers granted to the Town by 30-A M.R.S.A. § 3001, as may be amended from time to time.

Section 11. Amendments
Amendments may be made by a majority vote of the Town at any Harpswell Town Meeting and shall take effect upon enactment unless otherwise specified.

Section 12. Effective Date
This ordinance shall become effective upon its adoption.
Definitions Addendum

to the

Basic Land Use Ordinance
Shoreland Zoning Ordinance
Subdivision Ordinance
Site Plan Review Ordinance

As Approved March 11, 2000
As Amended March 10, 2001
As Amended March 9, 2002
As Amended March 8, 2003
As Amended March 10, 2007
As Amended March 14, 2009
As Amended March 20, 2010
As Amended March 12, 2011
As Amended June 12, 2012
As Amended March 9, 2013
As Amended March 15, 2014
As Amended March 14, 2015
As Amended March 12, 2016
As Amended March 11, 2017
DEFINITIONS ADDENDUM

Citizen's Note: The Definitions Addendum provides a common set of definitions for the Basic Land Use Ordinance, the Shoreland Zoning Ordinance, the Site Plan Review Ordinance and the Subdivision Ordinance.

All words not defined herein shall carry their customary and usual meanings. Words used in the present tense shall include the future. Words used in the singular shall include the plural and vice versa. The word "lot" shall include "parcel" and "plot." The words "shall" or "must" are used to indicate the mandatory and the word "may" is used to indicate the permissive. The words "occupied" or "used" shall be considered as though followed by the words "or intended, arranged, or designed to be used or occupied."

Abutters – the owners of property listed on the Town’s most recent assessing records who may be entitled to receive notice of applications before the Planning Board or the Board of Appeals.

Abutting Property – any lot which is physically contiguous with the parcel of land, even if only at a point and any lot which is located directly across a public or private way from the parcel of land such that the extension of the side lot lines of the parcel would touch or enclose the abutting property.

Accessory Residential Unit – A second dwelling unit contained within a single family detached dwelling or an accessory building on the same lot as a single family detached dwelling for use as a complete, independent living quarters, with provision for living, sleeping, bathing, and cooking.

1. The accessory residential unit shall not be greater than seven hundred fifty (750) square feet or fifty percent (50%) of the total square footage of the primary dwelling, whichever is more restrictive.
2. The accessory apartment shall be secondary, incidental and subordinate to the single family residential or commercial use.

Accessory Structure or use – 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.

Active Building Permit – a building permit that has not expired or been revoked

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 is under consideration or 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: forage and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and greenhouse products. Agriculture does not include forest management and timber harvesting activities.

**Applicant** – the assessed owner or owners of land for which a permit, variance or appeal is sought or person with documented title, right, or interest in the land for which a permit, variance or appeal is sought.

**Aquaculture** – the growing or propagation of harvestable fresh water, estuarine, or marine plant or animal species.

**Basal Area** – the area of a cross section of a tree stem at four and one half (4½) feet above ground level and inclusive of bark.

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

**Bed and Breakfast Home Occupations** – bed and breakfast means any establishment where the general public can stay overnight for a fee in the home occupied by the owner and are provided with a breakfast meal but shall not serve other meals or have dining facilities open to the public. For the purpose of this ordinance, Bed and Breakfast establishments shall be considered as home occupations if they provide no more than four bedrooms for overnight guests. Such usage as a Bed and Breakfast is subject to adequate sewage disposal as certified by the plumbing inspector.

**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.

**Boat Repair and Construction Facility** – a facility whose primary or sole use is the construction or repair of commercial and/or pleasure vessels and which may also supply three (3) or less moorings as an accessory use.

**Brunswick Labor Market Area** – the median family income most recently published by the Maine State Housing Authority for the Brunswick region.

**Buffer, Buffer Area, Buffer Strip** – land area used to visibly separate and screen one (1) use from another or to shield or block noise, light, or other nuisances, and thus, minimize the effects to adjacent properties or sensitive natural resources. A buffer may include one or a combination of the following: plantings of sufficient mass to effectively block the view or that shall block the view after thirty-six (36) months, walls, fences, or natural growth.

**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.

Campsite – any plot of ground within a campground intended for use by a tent, trailer, recreation vehicle or similar shelter under the control of an individual camper.

Change from one category of non-residential use to another category of non-residential use – a change in the type of occupancy of a non-residential structure, or a portion thereof, such that the basic type of use is changed, such as from retail to office or storage to a restaurant, but not including a change in the occupants.

Chemical Fertilizer – a chemical fertilizer is defined as any inorganic material of wholly or partially synthetic origin that is added to the soil to sustain plant growth.

Code Enforcement Officer – the person appointed as Code Enforcement Officer or Alternate Code Enforcement Officer by the Board of Selectmen.

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, and may also include the processing of marine life and the sale thereof in any form.

Community Dock – a single wharf, pier, dock and/or float located: on a lot in a subdivision approved by the Planning Board and having a common right of use by the association of homeowners having common rights of interest in the lot and which is used by the property owners for loading and unloading of passengers and/or cargo and the tying of dinghies; or on town owned land having the common right of use by the general public.

Community Shoreland Access – a point of access to the coastal wetland including associated structures such as raised boardwalks, stairs, access roads, paths and parking lots located: on a lot in a subdivision approved by the Planning Board and having a common right of use by the association of homeowners having common rights of interest in the lot containing the point of access; or on town owned land having the common right of use by the general public.

Composted Manure – a mixture of decaying organic matter, as from animal bedding or leaves and excrement, typically barnyard or stable dung, used as a soil amendment to improve soil structure and provide nutrients. Composted manure must be, at a minimum, aged for a period of not less than ninety (90) days to allow high levels of nitrogen to leach from the material before application.

Comprehensive Plan – the “2005 Update of the Harpswell Comprehensive Plan” adopted March 2005, and any amendments to the plan that have been subsequently adopted by the voters of the Town. Map No. 5 of the 1987 Comprehensive Plan is also included.
Canopy – the more or less continuous cover formed by tree crowns in a wooded area.

Contiguous Property; Contiguous Lots – lots that adjoin at any line or point

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 maximum high-water line on one side of the channel to the maximum 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 maximum high-water lines of the stream or tributary stream channel to the bottom of the channel.

Curb Cut – any new vehicular entrance (driveway) on to an established road

Cut-Off Fixture – a lighting fixture or luminaire that controls glare by directing light well below the horizontal. A cut-off fixture must limit the direction of light so that a maximum of 2.5% of the total lamp lumens shine above ninety (90) degrees or a line parallel to the surface of the ground and a maximum of ten percent (10%) of the lamp lumens shine above eighty (80) degrees.

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

**Drinking Water Standards** – the standards for primary and secondary drinking water as set forth in Title 22, Maine Revised Statutes Annotated, Chapter 601, Subchapter 11 and as further defined in the State of Maine Rules Relating to Drinking Water, Chapter 7.

**Driveway** – a private vehicular access way connecting a house, garage or other structure on a single lot to a road.

**Dwelling** – a residential structure containing one or more dwelling units, including single-unit, two (2) unit, and multi-unit residential uses, and manufactured housing but not recreational vehicles.

**Dwelling Unit** – a room or group of rooms designed and equipped for use as a separate living space by a household containing cooking, sleeping and toilet facilities with free and open circulation between these areas by members of the household. A dwelling unit is intended for occupancy by one household living independently in which the members of the household share the use of common areas and have regular interaction in the course of their day-to-day activities. The term shall include mobile homes, and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented but not recreational vehicles.

**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.

**Equity Recapture** – a resale formula included in a Workforce Housing Covenant that controls the sale price of a Workforce Housing Lot or Workforce Housing Unit. The purpose of a resale formula is to maintain long-term affordability, discourage speculation, assure the continued availability of workforce housing, and ensure moderate long term equity gain to the owner of any Workforce Housing Lot and Unit approved under the Workforce Housing provisions of the Basic Land Use Ordinance, as may be amended from time to time.

**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 cable or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar
accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services.

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

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

**Fisheries, Significant Fisheries** – areas identified by a government agency such as the Maine Department of Inland Fisheries and Wildlife (IFW) or Maine Department of Marine Resources (DMR) as having significant value as fisheries and any areas so identified in the Town’s comprehensive plan.

**Flexible Lot Size Subdivision** – a subdivision approved in accordance with Section 9.4.3 of the Subdivision Ordinance in which the lots may be less than 80,000 square feet and at least fifty percent (50%) of the parcel is set aside as protected or common open space.

**Floodway** – the channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the one hundred (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) or a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks.

**Food Products** – a raw, cooked or processed edible substance, ice, non-alcoholic beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

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

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

**Foundation** – the supporting substructure of a building or other structure including but not limited to basements, slabs, sills, posts, frost walls or other base consisting of concrete, block, brick or similar material.
**Frontage** -

**Road Frontage** – the linear distance between the sidelines of a lot, measured along the lot line that borders upon whatever road serves as legal access to the lot. For the purposes of these ordinances, the following ways may be used to measure road frontage provided that they are no less than thirty-three (33) feet in width throughout their length:

1. A deeded private right of way.

2. An existing town way, public easement or State or State Aid Highway, provided access is not specifically prohibited.

3. An existing deeded right of way, whether dedicated to public use or not, on a road shown on an approved subdivision plan.

4. An existing private road for which no deed can be located but where the applicant can establish at least twenty (20) years of uncontested usage, and can establish the physical characteristics of the road, including but not limited to, its width.

5. A public or private right of way that provides passage to pedestrians and vehicles and which is the legal access to a lot.

**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.

**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 may include, but are not limited to commercial and recreational fishing and boating facilities excluding recreational boat storage buildings, fin fish 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, industrial uses dependent upon water-borne transportation, and uses which primarily provide general public access to marine or tidal waters.

*Citizen’s Note:* Boathouses and boat building may not qualify as functionally water-dependent uses.

**Glare** – excessive brightness that makes it difficult to see or that causes discomfort including the following:

- Direct Glare or glare from insufficiently shielded light sources or areas of excessive luminance within the field of view,
- Disability Glare or the effect of stray light in the eye whereby visibility and visual performance are reduced, and
• Discomfort Glare or glare that produces discomfort even if it does not interfere with visual performance or visibility.

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

**Green Infrastructure** – an approach to water management that protects, restores, or mimics the natural water cycle. Examples are rain gardens, permeable pavements, green roofs, infiltration planters, trees and tree boxes, rainwater harvesting systems (rain barrels), bioswales as well as preservation and restoration of natural landscapes (such as forests, floodplains and wetlands).

**Gross Income** – the income from all sources of all household members who reside in a Workforce Housing Lot or Unit.

**Gross Leasable Lot Area** – for the purpose of the Mitchell Field Marine Business District only, the gross leasable lot area is the total of the area of the Mitchell Field Marine Business District excluding any road rights-of-way, utility easements, easements for public access, or land that will not be available for lease for development including the pier and the causeway leading to the pier.

**Ground Cover** – small plants, fallen leaves, needles, and twigs, and the partially decayed organic matter on the forest floor.

**Ground Water** – all waters found beneath the surface of the earth.

**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 ten (10) acres within the area affected by a harvest.

**Hazardous Waste** – any material(s) included within the definition of hazardous waste contained in Chapter 850 of the Maine Department of Environmental Protection (DEP) Rules adopted pursuant to 38 MRSA Section 1319-O (1), as such rules may be amended from time to time.

**Height** – the vertical distance as measured from halfway between the mean original grade at the downhill side of the structure and the mean original grade at the uphill side of the structure to the highest point of the structure, excluding chimneys, steeples, antennas and similar appurtenances which have no floor area.

**Highest Annual Tide (HAT)** – the jurisdictional limit for all coastal wetlands. The HAT occurs in association with the new moon. It may be obtained from Maine Department of Environmental Protection (DEP) Highest Annual Tide Level chart.
**Historic or Archaeological Resources** – areas identified by the Maine Historic Preservation Commission or the National Park Service as having significant value as an historic or archaeological resources and any such areas identified in the Town’s Comprehensive Plan.

**Home Occupation** – an occupation or profession carried out for gain by a resident or occupant and conducted as an accessory use in or about such resident’s or occupant’s dwelling or accessory structure. All home occupations are subject to the provisions of Section 15.20 of the Shoreland Zoning Ordinance regardless of whether they are located within the Shoreland Zone.

**Homeowners/Landowners Association** – a community association that is organized in a development in which individual owners share common interests and responsibilities in protecting and/or maintaining facilities including but not limited to roads, community water or septic systems, open space, and recreation facilities. Homeowners/landowners associations include road associations.

**Household** – one or more individuals living as a unit in which they share the use of a dwelling unit and its facilities.

**Hydric Soils** – a soil that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part.

**Impermeable Surface** – land area covered by structures and associated constructed facilities; land areas that have been or will be covered by a low-permeability material, such as asphalt or concrete; and land areas such as gravel roads and unpaved parking areas that have been or will be compacted through design or use to reduce their permeability. Common impermeable surfaces include roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled macadam, or other surfaces that similarly impede the natural infiltration of water.

**Impermeable Surface Coverage** – the portion of a lot covered by impermeable surface.

**Increase in Nonconformity of a Structure** – any change in a structure or property that 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 impermeable surface coverage, or increase in height of a structure. Property changes or structure expansions that either meets the dimensional standard or that 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 that in-fill irregularly shaped structures.
**Individual Private Campsite** – an area of land that:
1. is not associated with a campground,
2. is developed for repeated camping by only one group not to exceed ten (10) individuals and
3. involves site improvements that may include but not be limited to gravel pads, parking areas, fireplaces, or tent platforms. This does not include rudimentary campsites that are used on an occasional basis for camping by private individuals and which does not include clearing of vegetation.

**Industrial** – the assembling, fabrication, finishing, manufacturing, packaging, or processing of goods, or the extraction of minerals. This shall in no case include the processing of fish or marine life. Processing of such goods shall be considered an acceptable commercial fish use.

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

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

**Land Use Ordinances** – the Town's ordinances governing land use including the Basic Land Use Ordinance, the Shoreland Zoning Ordinance, the Subdivision Ordinance, the Town Road Ordinance, the Sign Ordinance, the Site Plan Review Ordinance, the State Junkyard Ordinance, the Solid Waste Ordinance, the Floodplain Management Ordinance, and other ordinances that may be adopted by the Town from time to time.

**Licensed Forester** – a forester licensed under 32 M.R.S.A. Chapter 76, as may be amended from time to time.

**Liquidation Harvesting** – the purchase of timberland followed by a harvest that removes most or all commercial value in standing timber, without regard for long-term forest management principles, and the subsequent sale or attempted resale of the harvested land within five (5) years.

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

**Low Impact Development (LID)** – an approach to land development (or re-development) that works with nature to manage stormwater as close to its source as possible. LID employs principles such as preserving and recreating natural landscape features, minimizing impermeable surfaces to treat stormwater as a resource rather than a waste product, and include bioretention facilities, rain gardens, vegetated rooftops, rain barrels, and permeable pavements.
Maine DEP – the Maine Department of Environmental Protection or any successor agency of Maine government.

Marina – a business establishment that has frontage on navigable water and, that provides, as its principal use, for hire moorings or docking facilities for boats, and that 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. A marina does not include facilities that provide boat repair or construction as their primary or sole use and that may provide three (3) or less moorings as an accessory use.

Citizen's Note: See definition of boat repair facility.

Marine-Related Business – For the purposes of the Mitchell Field Marine Business District only, a marine-related business is a commercial or industrial activity that does not meet the definition of a functionally water-dependent use and that:
1. primarily catches or harvests fin fish, shellfish, or other material from the ocean;
2. builds boats;
3. operates marinas;
4. makes or provides goods or services to support recreation, commercial or recreational fishing or boating, boatbuilding or other marine-related uses;
5. stores, sells, raises, processes, and/or distributes materials that are caught or harvested from the ocean; or
6. that conducts research or educational activities related to the ocean or marine environments and/or marine plants and animals.

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 the prevailing general price levels.

Maximum 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 that 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.

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. This does not include soil analysis for subsurface waste disposal.

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 transports the product removed, away from the extraction site. This is in no way meant to construe excavation for permitted uses or structures.

**Minimum Lot Width** – the closest distance between the side lot lines of a lot.

**Mobile Food Handlers** – any person selling or offering for sale, food products within the Town from a mobile unit, and where delivery is made at the time of sale.

**Mobile Unit** – a mobile, temporary or non-permanent vending unit that is capable of being moved from place to place.

**Multi-Unit Residential Use** – a residential dwelling containing three (3) or more dwelling units. The placement of three (3) or more dwelling units on a lot or the division of an existing structure into three (3) or more dwelling units requires subdivision review under state and local law.

**Native** – indigenous to the local forests.

**Natural Areas and Natural Communities, Unique Natural Areas and Natural Communities** – areas identified by a governmental agency such as the Maine Department of Conservation Natural Areas Program as having significant value as a natural area and any areas identified in the Town’s comprehensive plan.

**Noise Control Plan** – a document that demonstrates how the noise impacts from a development will be minimized including:

1. A description of the proposed development including the identification of major sound sources, including tonal sound sources (rumbles, hums, whines, whistles, squeals), associated with the construction, operation, and maintenance of the proposed development and the proposed hours of operation;
2. The location of the sound sources shown on the site plan for the development;
3. Maps and descriptions of the land uses, zoning districts and existing sources of sound for the area potentially affected by sounds from the development. These maps and descriptions shall be adequate to describe the potentially affected area around the development and shall have a minimum coverage of 1,000 feet in all directions from the boundary of the Mitchell Field Marine Business District;
4. A description of day and night equivalent sound levels expected to be produced at the boundary of the Mitchell Field Marine Business District both as individual and combined sound sources.
5. Manufacturers’ specifications for machinery that has potential to be heard beyond the boundary of the Mitchell Field Marine Business District.
6. A description of any proposed noise control measures including their location and expected performance.

**Noise Reducing Site Design** – a site design for development in the Mitchell Field Marine Business District that controls noise impacts through the design and placement of structures and
other improvements on the site including, but not limited to, the use of buffers including walls and fences, and/or the location of service areas and loading docks, exhaust fans, machinery and equipment, overhead doors, areas where trucks back-up, and other noise generating area so they do not face the ocean or the nearest point on the boundary of the Mitchell Field Marine Business District.

**Nonconforming Condition** – nonconforming lot, structure or use that is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendment took effect.

**Nonconforming Lot** – a single lot(s) 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, but which is allowed solely because it was in lawful existence and was recorded in the Cumberland County Registry of Deeds at the time that this Ordinance or subsequent amendments took effect.

**Nonconforming Structure** – a structure which does not meet any one or more of the following dimensional requirements; setback, height, or impermeable surface coverage, but which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

**Nonconforming Use** – use of buildings, structures, premises, land or parts thereof that is not allowed in the district in which it is situated, but that is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

**Nuisance** – any violation of this ordinance.

**Odor Control Plan** – a document that demonstrates how the odor impacts from a development will be minimized including:

1. A description of the proposed development including the identification of major odor sources associated with the construction, operation, and maintenance of the proposed development and the proposed hours of operation;
2. The location of the odor sources shown on the site plan for the development;
3. Maps and descriptions of the land uses, zoning districts and existing sources of odors for the area potentially affected by odors from the development. These maps and descriptions shall be adequate to describe the potentially affected area around the development and shall have a minimum coverage of 1,000 feet in all directions from the boundary of the Mitchell Field Marine Business District;
4. A description of any proposed odor control measures including their location and expected performance.

**Offshore Island** – islands not connected to any other land by road and/or are accessible only by water or air at mean high tide.

**One-Unit Residential Use** – a residential dwelling containing one dwelling unit.
Open Fence – a fence through which water, wind and sand can easily move, for example, a split rail.

Open Space – an area of land in a predominately undeveloped condition.

Open Space, Common – conservation and/or recreation land within a subdivision that is owned by the residents of the subdivision in common or by a homeowners association and that is protected from future development by a conservation easement or similar legally binding restriction.

Open Space, Protected – conservation and/or recreation land within a subdivision that is owned by the Town, state or federal agency, conservation organization or land trust, or private owner and that is protected from future development by a conservation easement or similar legally binding restriction.

Organic Fertilizer – a product that is derived from the remains or by products of animals or vegetables which contain the essential nutrients for plant growth.

Perennial Stream – a free-flowing body of water which contains water at all times except during extreme drought.

Permanent Marker – a marker that, if left undisturbed, will remain in place for a period of at least twenty-five (25) years.

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

Piers, docks, wharves, bridges and other structures and uses extending over or beyond the maximum high-water line or within a wetland.

Temporary – structures that remain in or over the water for less than seven (7) months in any period of twelve (12) consecutive months.

Permanent – structures that remain in or over the water for seven (7) months or more in any period of twelve (12) consecutive months.

Pond – any inland body of water that in a natural state has a surface area less than ten (10) acres, or a body of water artificially formed or increased with a surface area less than thirty (30) acres excluding farm ponds, fire ponds, stormwater retention ponds, or landscape ponds and similar small man-made areas.

Primary Conservation Area – land within a subdivision that is not suitable for development or intensive use due to the presence of natural resource constraints. This includes coastal and
freshwater wetlands, significant vernal pools, undeveloped land within the 100-year floodplain, land within one hundred (100) feet of the upland edge of a freshwater wetland, and contiguous areas of one acre or more with a slope of more than twenty-five percent (25%).

**Principal Structure** – a building other than one that 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 that is wholly incidental or accessory to another use on the same premises.

**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.

**Qualified Buyers** – persons who meet the income requirements of a very low, low or moderate income household and who purchase Workforce Housing Lots or Units.

**Recent Flood Plain Soils** – the following soil series as described and identified by the National Cooperative Soil Survey:

<table>
<thead>
<tr>
<th>Alluvial</th>
<th>Cornish</th>
<th>Charles</th>
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<tr>
<td>Fryeburg</td>
<td>Hadley</td>
<td>Limerick</td>
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<tr>
<td>Lovewell</td>
<td>Medomak</td>
<td>Ondava</td>
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<td>Podunk</td>
<td>Rumney</td>
<td>Saco</td>
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<tr>
<td>Suncook</td>
<td>Sunday</td>
<td>Winooski</td>
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**Recreational Facility** – a place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, excluding boat launching facilities.

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

**Replacement System** – a system intended to replace:

1. an existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure, or
2. any existing overboard wastewater discharge.

**Residential** – a land use that is predominated by a dwelling or 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.

**Re-Subdivision** – the division of an existing subdivision previously approved by the Town or any change of lot size therein or the relocation of any road or lot in a subdivision previously approved by the Town.

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

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

**Road** – any one of the following vehicular access ways:

- **Arterial Road** – a road that is functionally classified by the Maine Department of Transportation (DOT) as an arterial, with controlled access, traffic signals at important intersections and/or stop signs on side roads.

- **Collector Road** – a road that is functionally classified as a collector by the Maine Department of Transportation (DOT), and that collects traffic from local roads and connects with arterial roads.

- **Local Road** – a public road or private road, other than arterial or collector roads.

- **Private Road** – a road that is privately owned, built, and maintained, but not including a driveway.

*Citizen’s Note: The town may not, under Maine law, spend public funds to construct, repair, maintain or plow privately owned roads.*

- **Public Road** – a public easement or town way.

- **Public Easement** – an easement held by the municipality for purposes of public access to land or water not otherwise connected to a public way, and includes the rights enjoyed by the public with respect to private ways created by statute prior to July 29, 1976, pursuant to 23 M.R.S.A. § 3012(2).

- **Town Way** – an area of land designated and held by a municipality for passage and use of the general public by motor vehicle; all town or county ways not discontinued or abandoned before July 29, 1976; and all state or state aid highways, or both, which are classified town ways as of July 1, 1982, or thereafter, pursuant to 23 M.R.S.A. § 53.
**Road Association** – see homeowners/landowners association.

**Salt Marsh** – areas along 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 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 inundated by tidal water during the highest annual tide (HAT) as identified in tide tables by the National Ocean Service. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black rush; common threesquare occurs in fresher areas.

**Secondary Conservation Area** – land within a subdivision that has natural resource, open space, scenic, or cultural value but that is potentially developable. These areas should be considered for protection in the design and layout of the subdivision including being part of the common or protected open space in a Flexible Lot Size subdivision. These areas include land that has been identified for protection or special treatment in the comprehensive plan, open space plan or other official Town document.

**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 installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway right-of-way: and  
   b) the total length of the extension is less than one thousand (1,000) feet.

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

**Setback** –

**Property, Side, Rear or Lot Line Setback** – the minimum horizontal distance from a lot line or edge of the traveled way, whichever is more restrictive, to the nearest part of a structure.

**Road Setback** – the minimum horizontal distance from the edge of the traveled way to the nearest part of a structure.
**Water Body, Shorefront or Wetland Setback** – the nearest horizontal distance from the maximum high-water line of a water body, tributary stream, or upland edge of a wetland to the nearest part of a structure, road, parking space or other regulated object or area.

**Shoreland Zone** – the land area located within two hundred fifty (250) feet, horizontal distance, of the maximum high water line of any great pond or salt water body; within two hundred fifty (250) feet, horizontal distance, of the highest annual tidal (HAT) elevation of any coastal wetland, within two hundred fifty (250) feet, horizontal distance, of the upland edge of a coastal wetland, or the upland edge of a freshwater wetland of ten (10) or more contiguous acres, or the upland edge of a freshwater wetland of less than ten (10) contiguous acres and adjacent to a surface water body, excluding any tributary stream, such that in a natural state, the combined surface area is in excess of ten (10) acres; and within seventy five (75) feet horizontal distance of the maximum high water line of a stream. The Shoreland Zone also includes the portion of the Mitchell Field Marine Business District as shown on the Official Shoreland Zoning Map that is more than two hundred fifty (250) feet, horizontal distance, from the HAT of the coastal wetland.

**Skid Road or Skid Trail** – a route repeatedly used by forwarding machinery or animal to haul or drag forest products from the stump to the yard or landing, the construction of which requires minimal excavation.

**Slash** – the residue, e.g., treetops and branches, left on the ground after a timber harvest.

**Sludge** – a solid, semisolid, or liquid residue that results after sewage (human and other waste from households and industries) is treated at a sewage plant.

**Sound Insulated Structure** – a building, structure, or equipment enclosure that limits the exterior sound level of machinery, equipment or activities located therein to not more than fifty five (55) dBA based on a one-minute equivalent sound level $L_{Aeq\, 1\text{-minute}}$ when measured at a distance of ten (10) feet from the exterior walls or roof of the structure or enclosure.

**Special Waste** – any material(s) included within the definition of special waste contained in Chapter 400, Section 1, subsection (Nnn) of the Maine Department of Environmental Protection (DEP) Rules, adopted pursuant to 38 MRSA Sections 341-D, 1304, 1310-N(9) and 1301 et Seq., as such rules may be amended from time to time.

**Stream** – a free-flowing body of water from the outlet of great pond or the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey (USGS) 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.

**Stormwater** – the part of precipitation, including runoff from rain or melting snow, that flows across the surface as sheet flow, shallow concentrated flow, or in drainage ways.
**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 tree houses with no roof, not to exceed twenty-five (25) square feet; picnic tables; lawn chairs; flag poles; temporary party tents not to exceed three (3) days; ninety-six (96) square feet camping tents that are accessory to a legally existing house and that are erected on the property not more than ten (10) days per calendar year; dog houses not to exceed ten (10) square feet; swimming pools not to exceed ten (10) square feet; fences and poles, wiring, and other equipment normally associated with service drops as well as guying and guy anchors. The term includes, but is not limited to, structures temporarily or permanently located, such as decks, satellite dishes, portable prefab structures, terraces, patios and other construction involving impermeable and/or non-vegetated surfaces.

**Structure Footprint** – the area covered by a structure measured from the exterior surface of the exterior walls at grade level plus the area covered by any portion of the structure not enclosed by walls, except for eaves which do not extend more than two feet from the exterior walls. Where the structure is elevated above grade level on posts or similar devices, the structure footprint is the area the structure would cover if it were located at ground level.

**Subdivision** – the division of a tract or parcel of land into three (3) or more lots within any five (5) year period in accordance with 30-A M.R.S.A. §4401[4] and as that Subsection may be amended from time to time.

- **Major subdivision** – is the division of a tract or parcel of land into five (5) or more lots within any five (5) year period or any subdivision that triggers State Site Location of Development review.

- **Minor subdivision** – is the division of a tract or parcel of land into four (4) or fewer lots within any five (5) year period and which does not trigger State Site Location of Development review.

**Substantial/Substantial Start of/Construction** – substantial construction of an individual structure means completion of the foundation and capping over for water tightness. Where there will be no foundation or no structure is proposed, substantial start means completion of at least thirty percent (30%) of the value of the work for which a building or other permit has been secured. In the case of a subdivision, substantial start means the completion of no less than thirty percent (30%) of the costs of proposed improvements within a subdivision. If the subdivision is to consist of individual lots to be sold or leased, the cost of construction of buildings on those lots shall not be included. When the construction involves use of a slab as the foundation, the slab must be completed within one year of the date on which the permit or approval was granted and a permanent roof completed within two years of the date on which the permit or approval was granted.

**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. § 414, as may be amended from time to time, any surface waste water disposal system, or any municipal or quasi-municipal sewer or waste water treatment system.

**Sustained Slope** – a change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.

**Tidal waters** – all waters affected by tidal action during the highest annual tide (HAT).

**Timber Harvesting** – the cutting and removal of timber for the primary purpose of selling or processing forest products. The cutting or removal of trees on a lot that has less than two (2) acres 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.

**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.

**Two-Acre Lot Size Subdivision** – a subdivision approved in accordance with Section 9.4.1 of the Subdivision Ordinance in which the size of all lots is a minimum of eighty thousand (80,000) square feet.

**Two-Unit Residential Use** – a residential dwelling containing two dwelling units.

**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 maximum spring tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are six (6) meters (approximately twenty (20) foot) tall or taller.

**Vegetation** – all live trees, shrubs and ground cover.
**Vernal Pool** – a natural, temporary to semi-permanent body of water occurring in a shallow depression that typically fills during the spring or fall and may dry during the summer. Vernal pools have no permanent inlet or outlet and no viable populations of predatory fish. A vernal pool may provide the primary breeding habitat for wood frogs (*Rana sylvatica*), spotted salamanders (*Ambystoma maculatum*), blue-spotted salamanders (*Ambystoma laterale*), and fairy shrimp as well as valuable habitat for other plants and wildlife, including several rare, threatened, and endangered species. A vernal pool intentionally created for the purposes of compensatory mitigation is included in this definition.

**Vernal Pool, Significant** – a vernal pool that is determined to be significant under the standards of the Maine Natural Resources Protection Act based on the number and type of pool-breeding amphibian egg masses in a pool, or the presence of fairy shrimp (*Eubranchipus* spp.) or use by threatened or endangered species.

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

**Water body** – any river, stream, great pond, tidal or open salt water area.

**Water Crossing** – any project extending from one bank to the opposite bank of a river, stream, or tributary stream or wetland, whether under, through, or over the water or wetland. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintained work on these crossings. This definition includes crossings for timber harvesting equipment and related activities.

**Wastewater** – water carrying wastes from homes, businesses, and industries that is a mixture of water and other liquids and dissolved or suspended solids, or excess irrigation water that is runoff to adjacent land. Wastewater includes septage as well as "gray water."

**Wetland** –

**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; any salt swamp, marsh, bog, beach, flat, meadow or other contiguous low land that is subject to tidal action during the highest annual tide (HAT) level as identified in tide tables published by the National Ocean Service.

**Forested Wetland** – a fresh water wetland dominated by woody vegetation that is six (6) meters (approximately twenty (20) feet) or taller.

**Fresh Water Wetlands** – freshwater swamps, marshes, bogs and similar areas, other than forested wetlands which are:
Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

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

The following three (3) criteria shall be met for classification as a freshwater wetland:

1. a predominance of hydric soils,
2. a prevalence of hydrophytic vegetation typically adapted for life in saturated soils, and
3. anaerobic conditions in the soil usually created by inundation or saturation by surface or groundwater for at least one (1) week of the growing season.

The absence of any one (1) of these three (3) criteria shall preclude classification as freshwater wetland.

Moderate or high value wetlands means wetlands that are defined as moderate or high value for wildlife as defined by the Maine Department of Inland Fisheries and Wildlife or as determined by the Town.

**Citizen’s Note**: This Ordinance defines fresh water wetlands in conformance with the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, an Interagency Cooperative Publication of the Fish and Wildlife Service, Environmental Protection Agency, Department of the Army, and Soil Conservation Service, to which all applicants are referred for additional information.

**Wildlife Habitat, Significant Wildlife Habitat** – areas identified by a government agency such as the Maine Department of Inland Fisheries and Wildlife (IFW) as having significant value as habitat for animals and any areas identified in the Town’s comprehensive plan.

**Windfirm** – the ability of a forest stand to withstand strong winds and resist wind throw, wind rocking, and major breakage.

**Woody Vegetation** – live trees or woody, non-herbaceous shrubs.

**Workforce Housing** – housing designed with the express intent of providing owner-occupied decent, safe, and sanitary living accommodations that are affordable to lower income households and moderate income households, in accordance with the following definitions:

- **Very low income household** – a household with a gross income less than or equal to fifty percent (50%) of the Brunswick Labor Market Area.
**Low income household** – a household with a gross income over fifty percent (50%), but less than or equal to eighty percent (80%), of the Brunswick Labor Market Area.

**Moderate income household** – a household with a gross income more than eighty percent (80%), but less than or equal to one hundred twenty percent (120%), of the Brunswick Labor Market Area.

**Workforce Housing Covenant** – an agreement for the development of a Workforce Housing Lot or Workforce Housing Unit which legally and permanently restricts the ownership and use of such Workforce Housing Lot or Workforce Housing Unit. Such agreement shall be between the Town and the applicant and shall be recorded in the Cumberland County Registry of Deeds prior to the issuance of a building permit, if for a single Workforce Housing Lot or Unit, or concurrently with the recording of any approved subdivision plan that includes a Workforce Housing Lot or Unit, if for a subdivision.

**Workforce Housing Fund** – a separate dedicated reserve account established by Town Meeting to be managed at the direction of the Board of Selectmen (BOS) for the receipt and management, in accordance with the provisions of the Basic Land Use Ordinance (BLUO) on Workforce Housing, of the following: gifts of land, housing, and other property useful in the administration of Section 11.18 of the Basic Land Use Ordinance, as may be amended from time to time; grants; and monetary donations. The Workforce Housing Fund shall be utilized solely for the construction, acquisition, and maintenance of Workforce Housing as defined herein and for the cost of administering workforce housing programs consistent with the Workforce Housing provisions of the Basic Land Use Ordinance, as may be amended from time to time.

**Workforce Housing Lot** – a residential lot of land for owner-occupied single family residential use that has been permanently protected for long term affordability by means of a covenant or other mechanism that includes an Equity Recapture formula which is recorded in the Cumberland County Registry of Deeds.

**Workforce Housing Unit** – a residential structure on a lot of land for owner-occupied single family residential use that has been permanently protected for long term affordability by means of a covenant or other mechanism that includes an Equity Recapture formula which is recorded in the Cumberland County Registry of Deeds.

**Yard Sale** – the sale of goods from a residential premises, whether advertised in local media, by signs, or otherwise, as a yard sale, barn sale, garage sale, household sale, moving sale, or other sale, whether accomplished by direct sale or auction; or the sale, at the seller’s place of residence, of all or part of the household goods, whether accomplished by direct sale or auction; or sales conducted by civic groups, school groups, church groups, charitable or fraternal organizations and other non-profit organizations if such sale is held on the organization’s premises.
SECTION 1. Purpose
It is the intent and purpose of this ordinance to establish an Emergency Management Agency in compliance and conformity with the provisions of 37-B M.R.S.A. Section 781 et seq., as may be amended from time to time, to ensure the complete and efficient utilization of the Town’s facilities and resources to combat disaster as defined herein.

SECTION 2. Definitions
The following definitions shall apply in the interpretation of this ordinance:

Agency. “Agency” means the Emergency Management Agency as established by this ordinance.

Agent. “Agent” means the director of the Town of Harpswell Emergency Management Agency, appointed as prescribed in this ordinance.

Disaster. “Disaster” means the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from any natural or man-made cause. These can include, but are not limited to, fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, critical material shortage, infestation, explosion or riot.

Emergency Management. “Emergency Management” means the coordination and implementation of an organized effort to mitigate against, prepare for, respond to and recover from a disaster.

Emergency Management Forces. “Emergency Management Forces” means the employees, equipment and facilities of all Town departments, boards, institutions and commissions and, in addition, it shall include all volunteer persons, equipment and facilities contributed by or obtained from volunteer persons or agencies.

SECTION 3. Organization
(a) The Board of Selectmen shall be responsible for the agency’s organization, administration and operation. The Board of Selectmen may employ such permanent or temporary employees as it deems necessary and prescribe their duties.
(b) The Board of Selectmen shall review the existing operational organization on a periodic basis to ascertain the agency’s ability to cope with its responsibilities and shall approve the Town’s Emergency Preparedness Plan.

SECTION 4. Appointment of Director; Duties and Responsibilities
The Board of Selectmen shall appoint the Emergency Management Agent, who shall coordinate the activities of all Town departments, organizations and agencies for civil
emergency preparedness within the town and maintain a liaison with other emergency management agencies, public safety agencies and have such additional duties as prescribed by the Board of Selectmen.

SECTION 5. Rules and Regulations
The Emergency Management Agent shall prepare such policies as may be deemed necessary for the administration and operational requirements of the agency, which policies must be approved by the Board of Selectmen prior to becoming effective.

SECTION 6. Emergency Proclamation
(a) The Chairman of the Board of Selectmen shall have the power and authority to issue a proclamation that an emergency exists whenever a disaster or civil emergency exists or appears imminent. The proclamation may declare that an emergency exists in any or all sections of the town. If the Chairman of the Board of Selectmen is temporarily absent from the town or otherwise unavailable, then the following persons shall have the power and authority to issue a proclamation that an emergency exists, in the following order of succession: the Emergency Management Agent, if he/she is available in consultation with the Town Administrator if possible; and then the Town Administrator. A copy of such proclamation shall be filed within twenty-four (24) hours in the office of the Town Clerk. (See Example Reference A)
(b) Notwithstanding the above, when consultation with the Chairman of the Board of Selectmen would result in a substantial delay in an effective response in alleviating or preventing an emergency or disaster, the Emergency Management Agent or his/her successor as outline above is authorized to take whatever actions are necessary to prevent the loss of life and property in the town.
(c) The Emergency Management Agent shall be responsible for submitting a full report to the Board of Selectmen of all actions taken as a result of the declared emergency as soon as possible.

SECTION 7. Termination of Emergency
(a) When the Board of Selectmen is satisfied that a disaster or civil emergency no longer exists, it shall terminate the emergency proclamation by another proclamation affecting the sections of the town covered by the original proclamation, or any part thereof. Said termination of emergency shall be filed in the office of the Town Clerk.
(b) No state of emergency may continue for longer than five (5) days unless renewed by the Board of Selectmen.

SECTION 8. Board of Selectmen Duties and Emergency Powers
(a) During any period when an emergency or disaster exists or appears imminent, the Board of Selectmen may promulgate such regulations as it deems necessary to protect life and property and to preserve critical resources within the purposes of this ordinance. Such regulations may include, but are not limited to, the following:
   1) Regulations prohibiting or restricting the movement of vehicles in areas within or without the Town;
   2) Regulations facilitating or restricting the movement of persons within the Town;
3) Regulations pertaining to the movement of persons from hazardous areas within the town; and
4) Such other regulations necessary to preserve public peace, health and safety.

(b) Nothing in this section shall be construed to limit the authority or responsibility of any department to proceed under powers and authority granted to them by State statute or local ordinance.

(c) The Board of Selectmen or its designee may order the evacuation of persons from hazardous areas with the town.

(d) The Board of Selectmen shall be authorized to request aid or assistance from the State or any political subdivision of the State and shall render assistance to other political subdivisions under the provisions of Title 37-B of the Maine Revised Statutes.

(e) The Board of Selectmen may obtain vital supplies, equipment and other items found lacking and needed for the protection of health, life and property during an emergency without following normal purchasing or formal bid procedures.

(f) The provisions of this section will terminate at the end of the declared emergency.

(See example Reference B)

SECTION 9. Emergency Operational Plans
The Emergency Management Agent shall update an emergency operational plan for the Town as necessary and shall present such modifications within 90 days of appointment to the Board of Selectmen.

It shall be the responsibility of all municipal departments and agencies to perform the functions assigned and to maintain their portions of the plan in a current state of readiness. The Town plan shall be reviewed periodically by the Board of Selectmen in conjunction with the Emergency Management Agent.

SECTION 10. Immunity from Liability
All members of emergency management forces, while engaged in emergency management activities, shall be immune from liability, as set forth in 37-B M.R.S.A. Section 822, as may be amended from time to time.

SECTION 11. Compensation for Injuries
All members of emergency management forces shall be deemed to be employees of the State when engaged in training or on duty and shall have all of the rights of State employees under the Workmen’s Compensation Act, as set forth in 37-B M.R.S.A. Section 823., as may be amended from time to time.

SECTION 12. Violation of Regulations
It shall be unlawful for any person to violate any provisions of this ordinance, or of the regulations or plans issued pursuant to the authority contained herein, or to obstruct, hinder or delay any member of the emergency management organization, as herein defined, in the enforcement of the provisions of this ordinance or any regulation or plan issued hereunder.
SECTION 13. Penalty
Any person, firm or corporation violating any provision of this ordinance or any rule or regulation promulgated there under, upon adjudication thereof, shall be punished by a civil fine of not more than five hundred dollars ($500.00) and the costs of prosecution.

SECTION 14. Severability
Should any provision of this ordinance be declared invalid for any reason, such declaration shall not effect the validity of other provisions or of this ordinance as a whole, it being the legislative intent that provisions of this ordinance shall be severable and remain valid notwithstanding such declaration.

SECTION 15. Conflicting Ordinances, Orders, Rules and Regulations Suspended
At all times when an emergency proclamation is in effect, the orders, rules and regulations made and promulgated pursuant to this ordinance shall supersede all existing ordinances, orders, rules and regulations, insofar as the latter may be inconsistent herewith.
REFERENCE A

EMERGENCY PROCLAMATION

Section 6 (after c)

Pursuant to the authority vested in me by the TOWN OF HARPSWELL EMERGENCY MANAGEMENT ORDIANCE, I hereby proclaim that an emergency exists in the following location(s) of the Town of Harpswell:

Location(s):

Due to the following emergency:

Date: ________________  Signed: ____________________
Time: ________________  Title: ____________________
REFERENCE B

PROCLAMATION TERMINATING EMERGENCY

Section 8 (after f)

Pursuant to the authority vested in me by the TOWN OF HARPRESSWELL EMERGENCY MANAGEMENT ORDIANCE, I hereby proclaim that the emergency created by:

Emergency Proclamation dated: __________

Shall be terminated at ______ (time) on ________(date).

Date: ________________  Signed: ________________
Time: ________________  Title: ________________
Town of Harpswell
Ordinance to Prohibit the Sale and Restrict the Use of Consumer Fireworks

Section 1. Purpose
This ordinance governs the sale and use of consumer fireworks within the limits of Harpswell to ensure the safety of residents, taxpayers and visitors of the Town of Harpswell.

Section 2. Title and Authority
This ordinance shall be known as the “Town of Harpswell Ordinance to Prohibit the Sale and Restrict the Use of Consumer Fireworks.” It is adopted pursuant to 30-A M.R.S.A. § 3001 and 8 M.R.S.A. § 223-A(2), both as may be amended from time to time.

Section 3. Definitions
As used in this ordinance, the following terms shall have the following meanings respectively ascribed to them:

Consumer Fireworks shall have the same meaning as the term set forth in 27 Code of Federal Regulations, Section 555.11, as may be amended from time to time, but includes only products that are tested and certified by a third party testing laboratory as conforming with United States Consumer Product Safety Commission standards, in accordance with 15 United States Code, Chapter 47. “Consumer fireworks” does not including the following products:

(1) Missile-type rockets, as defined by the State Fire Marshal by rule:
(2) Helicopters and aerial spinners, as defined by the State Fire Marshal by rule; and
(3) Sky rockets and bottle rockets. For purposes of this paragraph, “sky rockets and bottle rockets” means cylindrical tubes containing not more than 20 grams of chemical composition, as defined by the State Fire Marshal by rule, with a wooden stick attached for guidance and stability that rise into the air upon ignition and that may produce a burst of color or sound at or near the height of flight.

Display shall have the same meaning as that term is defined under State law, 8 M.R.S.A § 221-A(3), as may be amended from time to time.

Fireworks shall have the same meaning as that term is defined under State law, 8 M.R.S.A. § 221-A(4), as may be amended from time to time.

Person shall mean any individual, partnership, limited liability company, corporation, governmental entity, association, or public or private organization of any character.

Town shall mean the Town of Harpswell.

Section 4. Prohibitions
No person shall sell, possess with the intent to sell or offer for sale consumer fireworks in the Town. No person shall use consumer fireworks in the Town except in accordance with Section 5 below.
Section 5. Limitation on the Use of Consumer Fireworks.
(a) Consumer fireworks may be used on the following dates and during the following times:
   (1) July 3, beginning at 9:00 a.m. and ending at 10:00 p.m.;
   (2) July 4, beginning at 9:00 a.m. and ending at 12:30 a.m. on July 5;
   (3) July 5, beginning at 9:00 a.m. and ending at 10:00 p.m.;
   (4) December 31, beginning at 9:00 a.m. and ending at 12:30 a.m. on January 1;
   (5) January 1, beginning at 9:00 a.m. and ending at 10:00 p.m.; and
   (6) The weekends immediately before and after July 4 and December 31, beginning at 9:00 a.m. and ending at 10:00 p.m.

(b) A person may use consumer fireworks only on that person’s property or on the property of a person who has consented to the use of consumer fireworks on that property.

(c) Nothing in this Ordinance shall be construed to apply to a person issued a fireworks display permit by the State of Maine pursuant to 8 M.R.S.A. § 227-A, as may be amended from time to time.

(d) Nothing in this Ordinance shall be construed to allow the use of any fireworks or consumer fireworks that are prohibited by State law.

Section 6. Penalties
Any person who sells consumer fireworks, possesses consumer fireworks with the intent to sell, or offers consumer fireworks for sale shall be punished by a fine of not less than five hundred dollars ($500.00) plus costs. For second and subsequent offenses, a fine of not less than one thousand dollars ($1,000.00) per violation plus costs shall be imposed. Any person who uses consumer fireworks in violation of Section 5 above in the Town shall be punished by a fine of not less than one hundred dollars ($100.00) plus costs. For second and subsequent offenses, a fine of not less than two hundred and fifty dollars ($250) per violation plus costs shall be imposed.

Section 7. Seizure and Disposal
The Town may seize consumer fireworks that the Town has probable cause to believe are sold or used in violation of this Ordinance or in violation of State law and shall forfeit the seized consumer fireworks to the State of Maine for disposal.

Section 8. Enforcement
This Ordinance shall be enforced by the Town’s duly authorized law enforcement provider or any other duly authorized agent of the Town approved by the Selectmen to enforce this Ordinance.

Section 9. 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 this Ordinance.

Section 10. Effective Date
Adopted March 10, 2012.
TOWN OF HARPSWELL
FLOODPLAIN MANAGEMENT ORDINANCE

Enacted July, 27, 1997
Amended March 8, 2003
Amended March 8, 2008
Amended March 11, 2017
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>ARTICLE</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. PURPOSE AND ESTABLISHMENT</td>
<td>3</td>
</tr>
<tr>
<td>II. PERMIT REQUIRED</td>
<td>3</td>
</tr>
<tr>
<td>III. APPLICATION FOR PERMIT</td>
<td>3</td>
</tr>
<tr>
<td>IV. APPLICATION FEE AND EXPERT'S FEE</td>
<td>5</td>
</tr>
<tr>
<td>V. REVIEW STANDARDS FOR FLOOD HAZARD DEVELOPMENT PERMIT APPLICATIONS</td>
<td>5</td>
</tr>
<tr>
<td>VI. DEVELOPMENT STANDARDS</td>
<td>7</td>
</tr>
<tr>
<td>VII. CONDITIONAL USE REVIEW</td>
<td>15</td>
</tr>
<tr>
<td>VIII. CERTIFICATE OF COMPLIANCE</td>
<td>16</td>
</tr>
<tr>
<td>IX. REVIEW OF SUBDIVISIONS AND DEVELOPMENT PROPOSALS</td>
<td>16</td>
</tr>
<tr>
<td>X. APPEALS AND VARIANCES</td>
<td>17</td>
</tr>
<tr>
<td>XI. ENFORCEMENT AND PENALTIES</td>
<td>19</td>
</tr>
<tr>
<td>XII. VALIDITY AND SEVERABILITY</td>
<td>20</td>
</tr>
<tr>
<td>XIII. CONFLICT WITH OTHER ORDINANCES</td>
<td>20</td>
</tr>
<tr>
<td>XIV. DEFINITIONS</td>
<td>20</td>
</tr>
<tr>
<td>XV. ABROGATION</td>
<td>26</td>
</tr>
</tbody>
</table>
ARTICLE I - PURPOSE AND ESTABLISHMENT

Certain areas of the Town of Harpswell, 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 Harpswell, 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 may be amended from time to time) as delineated in this Floodplain Management Ordinance.

It is the intent of the Town of Harpswell, 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 Harpswell has the legal authority to adopt land use and control measures to reduce future flood losses pursuant to 30-A MRSA, § 3001-3007, 4352, 4401-4407, and Title 38 MRSA, Section 440, as may be amended from time to time.

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

The areas of special flood hazard, Zones A1-30, AO, and V1-30 are identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study - Town of Harpswell, Maine, Cumberland County," dated January 3, 1985 with accompanying "Flood Insurance Rate Map" dated July 20, 1998, 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 Code Enforcement Officer, except as provided in Article VII. This permit shall be in addition to any other permits which may be required pursuant to the codes and ordinances of the Town of Harpswell, Maine.

ARTICLE III - APPLICATION FOR PERMIT

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

A. The name, address and phone number of the applicant, owner, and contractor;

B. An address and a map indicating the location of the construction site;
C. A site plan showing location of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions;

D. A statement of the intended use of the structure and/or development;

E. A statement of the cost of the development including all materials and labor;

F. A statement as to the type of sewage system proposed;

G. Specification of dimensions of the proposed structure and/or development;

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

H. The elevation in relation to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD), or to a locally established datum in Zone A only, of the:

1. base flood at the proposed site of all new or substantially improved structures, which is determined in Zones A1-30, AO, and V1-30 from data contained in the "Flood Insurance Study – Town of Harpswell, Maine," as described in Article I;

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, 03/09, as may be amended from time to time), 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, Zones V1-30, 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 $50.00 shall be paid to the Town Treasurer and a copy of a receipt for the same shall accompany the application.

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

ARTICLE V - REVIEW STANDARDS FOR FLOOD HAZARD DEVELOPMENT PERMIT APPLICATIONS

The Code Enforcement Officer shall:

A. Review all applications for the Flood Hazard Development Permit to assure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of Article VI (Development Standards) have been, or will be met;

B. Utilize, in the review of all Flood Hazard Development Permit applications, the base flood and floodway data contained in the "Flood Insurance Study - Town of Harpswell, Maine," as described in Article I; in special flood hazard areas where base flood elevation and floodway data are not provided, the Town of Harpswell 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; Article VI.K.; and Article IX.D., in order to administer Article VI of this Ordinance.

C. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in Article I of this Ordinance;

D. In the review of Flood Hazard Development Permit applications, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including but not limited to Section § 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1344, as may be amended from time to time;

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. Zones A1-30 shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.
2. Zones AO shall have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.

3. Zone AO shall have the lowest floor (including basement) elevated above the highest adjacent grade:
   a. at least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,
   b. at least three feet if no depth number is specified.

4. Zones V1-30 shall meet the requirements of Article VI.P.

G. **Non Residential** - New construction or substantial improvement of any non-residential structure located within:

1. Zones A1-30 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. Zones AO shall have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.

3. Zone AO shall have the lowest floor (including basement) elevated above the highest adjacent grade:
   a. at least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,
   b. at least three feet if no depth number is specified; or,
c. together with attendant utility and sanitary facilities be floodproofed to meet the elevation requirements of this section and floodproofing standards of Article VI.G.1.

4. Zones V1-30 shall meet the requirements of Article VI.P.

H. **Manufactured Homes** - New or substantially improved manufactured homes located within:

1. Zones A1-30 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. Zones AO shall have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.

3. Zone AO shall have the lowest floor (including basement) of the manufactured home elevated above the highest adjacent grade:

   a. at least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,

   b. at least three feet if no depth number is specified; and,

   c. meet the anchoring requirements of Article VI.H.1.c.

4. Zones V1-30 and VE shall meet the requirements of Article VI.P.
I. **Recreational Vehicles** - Recreational Vehicles located within:

1. Zones A1- 30 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. Zones V1-30 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 A1-30 and AO, 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 Zones A1-30 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 A1-30 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 may be amended from time to time).

3. In Zones A1-30 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 A1-30 and AO, 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 located within Zones A1-30, AO, and V1-30 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 A1-30 and V1-30 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.
2. Zones AO shall have adequate drainage paths around containment walls on slopes, to guide floodwater away from the proposed walls.

3. Zone AO shall have the top of the containment wall elevated above the highest adjacent grade:
   a. at least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,
   b. at least three feet if no depth number is specified; and,
   c. shall meet the requirements of Article VI.N.1.b. & c.

O. **Wharves, Piers and Docks** - New construction or substantial improvement of wharves, piers, and docks are permitted in Zones A1-30, AO, and V1-30, 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 A1-30 and V1-30 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 Zones V1-30 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/June, 2000); 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 Zones V1-30 is prohibited.

4. Human alteration of sand dunes within Zones V1-30 is prohibited unless it can be demonstrated that such alterations will not increase potential flood damage.

5. The areas below the lowest floor shall be used solely for parking vehicles, building access, and storage.

6. Conditional Use - Lobster sheds and fishing sheds may be located seaward of mean high tide and shall be exempt from the elevation requirement in Article VI.G. only if permitted as a Conditional Use following review and approval by the Planning Board, as provided in Article VII, and if all the following requirements and those of Article VI.A., VI.K., and VI.L. are met:

a. The conditional use shall be limited to low value structures such as metal or wood sheds 200 square feet or less and shall not exceed more than one story.

b. The structure shall be securely anchored to the wharf or pier to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.

c. The structure will not adversely increase wave or debris impact forces affecting nearby buildings.
d. The structure shall have unfinished interiors and shall not be used for human habitation.

e. Any mechanical, utility equipment and fuel storage tanks must be anchored and either elevated or floodproofed to one foot above the base flood elevation.

f. All electrical outlets shall be ground fault interrupt type. The electrical service disconnect shall be located on shore above the base flood elevation and when possible outside the Special Flood Hazard Area.

ARTICLE VII - CONDITIONAL USE REVIEW

The Planning Board shall hear and decide upon applications for conditional uses provided for in this Ordinance. The Planning Board shall hear and approve, approve with conditions, or disapprove all applications for conditional uses. An applicant informed by the Codes Enforcement Office 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 Zones V1-30, certification by a registered professional engineer or architect that the design and methods of construction to be 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 SUBDIVISIONS 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(s) 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 Harpswell may, upon written application of an aggrieved party, hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the administration or enforcement of the provisions of this Ordinance. The Board of Appeals may grant a variance from the requirements of this Ordinance consistent with state law and the following criteria:

A. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.

B. Variances shall be granted only upon:

1. a showing of good and sufficient cause; and,

2. a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and,

3. a showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances; and,

4. a determination that failure to grant the variance would result in "undue hardship," which in this sub-section means:

   a. that the land in question cannot yield a reasonable return unless a variance is granted; and,
b. that the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and,

c. that the granting of a variance will not alter the essential character of the locality; and,

d. that the hardship is not the result of action taken by the applicant or a prior owner.

C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as 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 Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.

7. Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five days from the date of any decision of the Board of Appeals.

Appeals and variances shall be made in accordance with the provisions of the Basic Land Use Ordinance, Section 14.

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 30-A MRSA § 4452, as may be amended from time to time.

B. The penalties contained in 30-A MRSA § 4452, as may be amended from time to time 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 may be amended from time to time.

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 Shallow Flooding - means a designated AO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.
**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** – A person certified under Title 30-A MRSA, Section 4451 (including exceptions in Section 4451, paragraph 1) and employed by a municipality to enforce all applicable comprehensive planning and land use laws and ordinances.

**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 man made change to improved or unimproved real estate, including but not limited to buildings or other structures; mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials.

**Elevated Building** - means a non-basement building

a. built, in the case of a building in Zones A1-30, AE, A, AO, or AH, 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 A1-30 or AO, **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, **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, 03/09, as may be amended from time to time) 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), North American Vertical Datum (NAVD) or any other established datum and is used in areas where Mean Sea Level data is too far from a specific site to be practically used.

Lowest Floor - 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.

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

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

**Recreational Vehicle** - 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, 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 may be amended from time to time).
TOWN OF HARPSWELL
ACCEPTANCE OF GIFTS ORDINANCE

Purpose: The purpose of this Ordinance is to provide an orderly method for receiving certain types of gifts and to authorize the Board of Selectmen to accept such gifts. This Ordinance is adopted pursuant to 30-A M.R.S.A. §§ 5654 and 5655, as may be amended from time to time.

1. Delegation of Authority to Board of Selectmen

The Inhabitants of the Town of Harpswell hereby delegate to the Board of Selectmen the authority of the municipality to accept (i) conditional gifts as referenced in 30-A M.R.S.A. § 5654, and (ii) unconditional gifts as referenced in 30-A M.R.S.A. § 5655; subject, however to the exceptions set forth in Section 3 of this Ordinance. Any gifts to the Town of Harpswell (the “Town”) pursuant to 30-A M.R.S.A. §§ 5652 (donation of money) and 5653 (gifts of money or property in trust) as may be amended from time to time, remain unaffected by this Ordinance.

2. Gifts Originating from the Donor

When the Board of Selectmen receives a written notice from a prospective donor or a representative regarding a proposed gift, the Board of Selectmen shall submit the matter to public comment as an agenda item during any duly noticed Board of Selectmen meeting. Input from the community may include, but not be limited to, comment relating to the amount and scope of the gift received, the type of conditions, if any, that should be attached to it, the duration of the conditions of the gift, if any, and any other related comments and/or suggestions. The Board of Selectmen shall consider such comments from the public, but at all times the Board of Selectmen shall retain independent discretion to accept the gift and/or other conditions associated with said prospective gift. Within 10 days after the meeting at which a decision is made to accept or reject a proposed conditional or unconditional gift, the Board of Selectmen shall send written notice of their acceptance or rejection to the donor or the donor’s representative.

3. Exceptions

(a) If a proposed conditional or unconditional gift would obligate the Town to incur liabilities that total $300 or more per year, as determined by the Board of Selectmen, such proposed conditional or unconditional gift shall only be accepted by Town meeting.

(b) If a proposed conditional or unconditional gift of property is valued at $3,000 or greater, as determined by the Board of Selectmen, that gift shall only be accepted by Town meeting.

(c) No conditional gift may be accepted which requires any form of naming, recognition or representation of any religious or political symbols or affiliation.

4. Effective Date

Adopted by Town Meeting on March 20, 2010
Section 1  PURPOSE

The Town of Harpswell Harbor and Waterfront Ordinance is hereby established to regulate marine activities within the Town, to ensure the safety of its property, its inhabitants and the general public, to guarantee the availability and use of a valuable public resource, and to create a fair and equitable framework for administration of these goals.

Section 2  AUTHORITY AND ADMINISTRATION

2.1 Authority

2.1.1 This Ordinance is adopted pursuant to Home Rule Powers as provided for in Article VIII-A of the Maine Constitution and M.R.S. 30-A §3001, as the same may be amended from time to time.

2.1.2 This Ordinance is also adopted pursuant to Title 38 M.S.R.A. Chapter 1, Subchapter 1, as the same may be amended from time to time. All provisions of Title 38 M.R.S.A. Chapter 1, Subchapter 1, as may be amended from time to time, are adopted as part of this Ordinance, except to the extent its provisions are inconsistent with the expressed terms herein.

2.1.3 This Ordinance shall be known as the Town of Harpswell Harbor and Waterfront Ordinance, and shall govern specified activities within the limits of the Town of Harpswell.

2.2 Administration

This Ordinance shall be administered by the Harbormaster and Selectmen of the Town of Harpswell, who may be assisted by a Harbor and Waterfront Committee (“the Committee”).

2.3 Severability and Separability

Should any section or provision of this Ordinance for any reason be held void and invalid it shall not affect the validity of any other section or provision.
2.4 Designations of Gender, Singular and Plural

2.4.1 Wherever the masculine gender is used herein, it shall be construed to include the feminine.

2.4.2 Wherever the singular is used herein, it shall be construed to include the plural.

Section 3 CLASSIFICATION OF WATERS

3.1 Classification

All the waters of Harpswell shall be classified by affirmative vote at a Town Meeting as either Harbors, Anchorages, or Open Coastline.

3.2 Classifications Plan

3.2.1 The classification of areas shall be recorded on a map of the Town, herein after referred to as the Waters Classification Plan, prepared for that purpose and maintained by the Committee. Copies of the Plan may be made from time to time and may be distributed, but the official copy shall be that maintained by the Committee. A copy of the current Plan shall be filed at the Town office and made available for viewing by the Public upon request.

3.2.2 The Classifications of Harpswell waters shall be placed on the Waters Classification Plan and adopted at a Town Meeting.

3.3 Change in Classifications

3.3.1 Requests for changes in classifications shall be presented in writing to the Committee, and the Committee shall transmit the requested change to a Town Meeting with its recommendation either for approval or rejection by those voting at such Town Meeting.

3.3.2 All classification changes must be approved by affirmative action of a Town Meeting, either at the Annual Meeting or at a Special Meeting called for that purpose.

3.3.3 A record of all adopted modifications to the Waters Classification Plan indicating the date of the change(s), the reason for the recommended change(s), and the specifics of the change(s) shall be maintained by the Committee.

Section 4 DEFINITIONS

4.1 Abandoned Moorings
A mooring in Harpswell waters shall be considered abandoned unless it is currently registered with the Town and a valid permit number is clearly painted or burned on the mooring buoy. In addition, any registered mooring that is installed but unused for 365 days by the owner or his family or any registered mooring that is not installed within 365 days of the date of registration shall also be considered abandoned.
4.2 Abandoned Vessel
Any vessel which is determined by the Harbormaster to constitute a hazard to navigation, or which is sinking or already sunk, or which is stranded on any property without the permission of the owner of the property.

4.3 Anchorage
All areas within the waters of Harpswell specifically designated as Anchorage or Special Anchorage on the Waters Classification Plan. (For use as mooring areas but have no clear Zones or buffer zones specifically designated).

4.4 Closed Harbor
A mooring area determined by the Harbormaster to have reached or is reaching capacity.

4.5 Commercial Fishing Vessel
Any vessel used primarily to generate income through fishing.

4.6 Commercial Vessel
Any vessel used primarily to generate income.

4.7 Float Moorings
Floats that are used for business or recreation, not secured to the shore but held in place by mooring/moorings. (Army Corp of Engineers permit required).

4.8 Harbor
All areas within the waters of Harpswell which have been classified as Harbors on the Waters Classification Plan and which have clear zones, buffer zones, mooring locations, etc. specifically established.

4.9 Harbormaster
The person appointed to serve as such by the Board of Selectmen.

4.10 Marine Related Business
A business establishment that must have direct access to navigable water in order to function, such as marinas, water-borne transportation facilities, and finfish and shellfish processing facilities, but excluding commercial fishing vessels. This definition is provided only for the purpose of this Ordinance and is not a definition of the term for the purposes of any other ordinance or plan approved by the Town.

4.11 Mooring
An anchoring device not carried aboard a vessel as regular equipment.

4.12 Mooring Buoy
A floating device designed to mark a mooring location.

4.13 Non-Resident
Any individual who does not maintain a legal residence within the Town of Harpswell.

4.14 Non-Resident Taxpayer
A non-resident who pays real estate taxes to the Town of Harpswell.

4.15 Open Coastline
All areas within waters of Harpswell not defined as Anchorage or Harbor pursuant to Sections 4.3 and 4.8.
4.16 Point of Access
The upland area in Harpswell that is used to access a mooring.

4.17 Rental Mooring
A mooring that is leased or rented to a person other than the holder of the mooring registration. (Army Corp of Engineers permit required).

4.18 Resident
An individual who maintains a legal residence in the Town of Harpswell.

4.19 Service Mooring
Any mooring owned by a commercial entity used in the daily operations of that business that is not intended for rental purposes. Guest moorings shall be considered Service Moorings. (Army Corp of Engineers Permit required).

4.20 Shorefront Owner
An owner of a parcel of land, as that term is defined in Title 38 M.R.S.A. § 11(2), as may be amended from time to time, contiguous to waters of Harpswell.

4.21 Town Wharf, Dock or Float
A wharf, dock or float owned and maintained by the Town of Harpswell.

4.22 Town Landing
An area of land contiguous to waters of Harpswell which is owned by the town of which is impressed with a public right of access.

4.23 Vessel
A vessel shall include boats of all sizes powered by sail, machinery or by hand; scows; dredges, and craft of any kind.

4.24 Waters of Harpswell
All waters below the ordinary high tide mark and extending seaward three miles from the shoreline of property located within the boundaries of the Town of Harpswell.

Section 5 MOORING REGISTRATION AND REGULATIONS

5.1.1 Registration
All moorings located below the low water line in waters of Harpswell shall be registered with the Town Clerk. For renewal moorings re-registered after May 1, the mooring fee will be doubled.

5.1.2 Requirements for New and Renewal Mooring Registration

Applicants for a new mooring registration must submit a completed application form to the Town Clerk on forms available in the Town Clerk’s Office. Applicants for a renewal mooring registration need only submit a new completed form to the Town Clerk if there are any changes to the registration from the prior year, including change of vessel, or upon the Harbormaster’s request.

5.1.3 Categories of Mooring Registration

5.1.3.1 Resident/Non-Resident Taxpayer
5.1.3.2 Non Resident
5.1.4 Registration Fees

The registration fee shall be in the amount determined by the Board of Selectmen in accordance with Title 38 M.R.S.A. § 7-A(2), as may be amended from time to time. The registration fee schedule shall be available at the Town Office.

5.1.5 Unregistered Moorings

If any mooring that has not been previously registered is placed in Harpswell waters, the Harbormaster may have the mooring removed immediately at the expense of the person or persons responsible. If any renewal moorings in the waters of Harpswell are unregistered after May 1, the Town Clerk shall notify the owner. If registration is not completed within thirty (30) days of the date of notice, the Harbormaster may have the mooring removed at the expense of the mooring owner.

5.1.6 Permit Stickers

Upon successful registration, the Town Clerk shall issue a mooring sticker showing the year and permit number. The sticker is to be placed on the mooring ball in a visible location above the watermark. In addition, the permit number must be painted or burned onto the mooring buoy in a legible manner with numbers at least 3 inches tall. Mooring buoys without the mooring permit number properly displayed shall be considered abandoned.

5.2 Assignment of Mooring Space

5.2.1 A permitted mooring shall be assigned a location in Harpswell waters by the Harbormaster on a first-come first served basis as space permits with due regard to navigation and the safety of persons and property, and, where feasible, the prior year’s location. New mooring permits will not be issued for a mooring that is located more than one-half statute mile from the applicant’s point of land access in Harpswell.

5.2.2 If there is insufficient space to assign allocations for all registered moorings in the location requested, the harbor will be considered closed. The applications not assigned mooring locations shall be placed on a waiting list which will be maintained by the Town Clerk, posted and available for inspection in the Town Office.

5.2.3 Any applicant who completes re-registration by May 1, of any year shall be given preference for the location occupied by the registrant’s mooring the prior year, unless the Harbormaster determines that a demonstrated need for that location has been shown by someone higher on the list of priorities in Section 5.2.4 below. In such an event, after consultation with the original registrant, the Harbormaster will provide a new location and relocate the mooring, in the same condition it was in at its original location, at the expense of the new mooring owner being assigned the original registrant’s location.

5.2.4 As space in closed Harbors and Anchorages of the waters of Harpswell becomes available, assignments of mooring locations shall be made from the waiting list in accordance with the terms of Title 38 M.R.S.A. § 7-A(2), as may be amended from time to time, on the basis of the date of the applicant’s request and with the following priorities:
5.2.4.1 Shorefront Owner with respect to an initial location adjacent to the 
owner’s shore frontage, including owners of lawfully created lots who, prior to 
January 1, 1987, owned shore rights of at least 100 feet of frontage regardless of 
the size of the lot;

5.2.4.2 Resident Commercial Fisherman;

5.2.4.3 Resident Marine Related Business

5.2.4.4 Resident Recreational;

5.2.4.5 Non-Resident Taxpayer;

5.2.4.6 Non-Resident Commercial Fishermen

5.2.4.7 Non-Resident Marine Related Business

5.2.4.8 Non-Resident Recreational.

5.2.5 Mooring Inspection

Annually, each registered mooring should be inspected by the mooring owner at 
the mooring owner's expense and must be determined by the mooring owner to 
be in a safe condition. The mooring owner is responsible for the adequacy and 
performance of all mooring gear, tackle, and maintenance thereof. The 
Harbormaster has the authority to inspect at any time any mooring and to require 
any necessary maintenance or replacement of parts or the whole mooring, tackle 
and/or gear, for which the mooring owner shall be responsible for all costs 
incurred.

The Town of Harpswell assumes no liability whatsoever for the actual 
performance or adequacy of any mooring system employed by a mooring owner.

5.2.6 Rental Moorings

No mooring shall be used as a rental mooring without first registering it with the 
Town and obtaining a permit from the Army Corps of Engineers. An alternate 
numbering system may be used by the rental mooring owner if approved by the 
Harbormaster.

5.2.7 Float Moorings

Float moorings shall be registered with the Town and be permitted by the Army 
Corps of Engineers. Float moorings shall only be used for their permitted 
purposes.

5.2.8 Transfer of Moorings

Mooring gear may be sold or transferred at the discretion of the owner. 
However, the mooring location or assignment may not be bought, sold, or 
otherwise transferred unless it is a transfer of a mooring assignment used for 
commercial fishing purposes. A mooring assignment used for commercial 
fishing purposes may be only be transferred as follows:

- at the request or death of the assignee;
- to a member of the assignee’s family; and
- if the mooring assignment will be continued to be used for 
  commercial fishing purposes.
For the purposes of this subsection, “member of the assignee’s family” means an assignee’s parent, child, or sibling by birth or by adoption, including a relation of half-blood or an assignee’s spouse. The Harbormaster shall be notified of transfers for commercial fishing purposes within thirty (30) days of the transfer.

5.2.9 Relocation of Moorings
When any mooring within the waters of Harpswell is located such that hazard to other property is inherent due to its position, the Harbormaster shall arrange for the relocation of the mooring or moorings involved whenever he is notified of the hazard. Any expense to the Town relating to the relocation of moorings shall be reimbursed by the owners.

5.3 Removal of Abandoned Moorings
When the Harbormaster has determined that a mooring is abandoned, he shall so tag the mooring buoy. He shall record the date of the determination, location of the mooring and, if possible, the name of the owner in his records. He shall notify the owner of the abandonment and order the owner to remove the mooring within fifteen (15) days of the date of the notice. If the mooring is not removed, the mooring buoy appropriately marked or re-registered within the applicable fifteen (15) day period, it may be removed or dropped by the Harbormaster at the expense or the owner in accordance with the provisions of Title 38 M.R.S.A., § 4, as may be amended from time to time. Nothing in this Section shall impede enforcement (Section 8.1.7) or collection of penalties (Section 8.2).

5.4 Removal of Abandoned Vessels
Except where the vessel constitutes an immediate hazard to public health or safety or welfare, the Board of Selectmen shall notify the owner of an abandoned vessel of his duty to remove the abandoned vessel within fifteen (15) days of the date of the notice. If the vessel is not removed within the applicable fifteen (15) day period, it may be removed by the Harbor-master at the expense of the owner in accordance with the procedures of Title 38 M.R.S.A. § 5, as may be amended from time to time. Where the Board of Selectmen determines that the abandoned vessel constitutes a threat to public health or safety or welfare, it may authorize the Harbor Master to remove the vessel immediately and without notice at the expense of the owner. Nothing in this Section shall prevent the Town from enforcing Section 8.1.5 or from collecting penalties (Section 8.2).

Section 6 HARBOR AND WATERFRONT COMMITTEE

6.1 Committee Make-up
The Harbor and Waterfront Committee shall be comprised of a certain number of members, as determined and appointed by the Board of Selectmen.

6.2 Terms of Office and Positions

6.2.1 At the time of adoption of this Ordinance, the Board of Selectmen shall designate two members of the Committee to have terms of office expiring at the end of one year, two members to have terms of office expiring at the end of two years, and three members to have terms of office expiring at the end of three years.

6.2.2 Thereafter, as normal terms of office expire, appointments to the Committee shall be for three year terms, thus guaranteeing continuity of the Committee and its work.
6.2.3 The committee shall annually, at the first meeting after the Board of Selectmen has appointed the members, elect a Chairman, a vice-chairman, and a secretary from among its own members. Those so elected shall take office at the close of the meeting and shall continue in office until the next annual election. Should the chairman’s position become vacant, the vice-chairman shall succeed to that position. Should other duly elected positions become vacant, the chairman will fill them by appointment.

6.2.4 Should any Committee Member’s position become vacated, a replacement shall be appointed by the Board of Selectmen to serve out the remainder of the term of the member being replaced.

6.2.5 Upon the written recommendation of the Committee, the Board of Selectmen may request the resignation of an inactive or disruptive Committee member and take the necessary steps for replacement.

6.2.6 Should a vacancy occur within three months of a normal term expiration the Board of Selectmen, at its discretion, may either leave the position vacant for the remainder of the unexpired term, or appoint a new member whose term will run for three years plus the unexpired remainder.

6.3 Duties and Responsibilities

6.3.1 The Committee shall act as an advisory Board to Harbormaster and the Board of Selectmen on all matters pertaining to Harbors, Anchorages and the Waterfront.

6.3.2 The Committee shall monitor the activities of the Harbormaster and his care, custody and management of Town Landings, harbors, Anchorages and their facilities and, from time to time, make recommendations to the Board of Selectmen.

6.3.3 The Committee shall work closely with the Harbormaster to ensure that his duties are carried out as intended by this Ordinance, Title 38 M.R.S.A. Chapter I and other applicable statutes. Suggestions for improvements or other changes(s) in Committee responsibilities shall be discussed with and approved by vote of the Board of Selectmen before being adopted.

6.3.4 The Committee shall serve as a Board of Appeals for decisions made by the Harbormaster under this Ordinance.

6.3.5 The Secretary shall keep an accurate record of all of the Committee’s proceedings and shall provide the Board of Selectmen with copies of the minutes of all meetings, and also with an Annual Report prepared in time for inclusion in the Annual Town Report.

6.4 Compensation

6.4.1 Committee Members shall serve without compensation.

6.4.2 Committee Members shall be reimbursed for any expenses incurred with the prior approval of the Board of Selectmen.
7.1 Harbormaster Appointment

The harbormaster shall be appointed by the Board of Selectmen and shall be subject to their control and supervision. The Harbormaster shall serve in that capacity until discharged by the Board of Selectmen or until resignation.

7.1.1 Deputy Harbormaster(s)

Deputy Harbormasters will serve only in certain designated areas of the Town’s waters, and will report directly to the Harbormaster who will define and limit his responsibilities. Where the term “Harbormaster” is used throughout the remainder of this Section 7, it shall also include “Deputy Harbormaster” except as may be limited or restricted by the Harbormaster himself, and also excluding Section 7.6 – Meetings. Deputy Harbormasters are not required to attend meetings of the Harbor and Waterfront Committee since their activities are regularly reported to the Harbormaster.

7.1.2 Assistant Harbormaster(s)

Assistant Harbormasters shall serve without salary and are to serve only in certain designated areas of the Town’s waters. Their function is only to assist the Harbormaster, and to keep him informed of any problems or any controversy in their area. The Harbormaster shall be appointed by the Board of Selectmen and shall serve in that capacity until discharged by the Board of Selectmen or until resignation.

7.2 Training

Within eighteen months of his/her employment, the Harbormaster shall successfully complete the State Harbormaster Association’s Training course at the expense of the Town. Failure to pass the course for any reason shall result in his/her termination and discharge by the Board of Selectmen, after notice and hearing.

7.3 Carrying a Weapon

Even though the Harbormaster may hold a valid permit to carry a weapon, he/she shall not do so in carrying out his/her duties until he/she has completed the Criminal Justice Academy training course (providing for power of arrest as well as permit for carrying a weapon) and unless he or she shall have received written approval from the Board of Selectmen to make arrests and to carry a weapon.

7.4 The salary of the Harbormaster and Deputy Harbormaster(s) shall be determined by the Board of Selectmen.

7.5 Management

The Harbormaster shall manage the Floats, Docks, Ramps, Moorings and Landings that are owned by the Town and shall make recommendations regarding their operation, use and maintenance to the Committee.

7.6 Meetings

The Harbormaster shall regularly attend meetings of the Harbor and Waterfront Committee, but shall not be a member of the Committee. He shall keep the Committee
fully informed of all his activities, problems encountered, solutions affected, and activities which have required his special attention. He shall also provide information on matters pertaining to the committee’s duties and responsibilities.

7.7 Records

The Harbormaster shall maintain a record for five years in which he shall record all complaints received (both written and oral), the date and time received, the response made to the complaint, and the date and time of such response.

Section 8 RULES AND REGULATIONS

8.1 Operation of Vessels/Rules and Regulations

8.1.1 It shall be unlawful to operate a vessel in the waters of Harpswell so as to endanger persons or property.

8.1.2 It shall be unlawful to operate a vessel in a manner which creates excessive wake or wake-wash.

8.1.3 It shall be unlawful to establish or maintain an unregistered mooring.

8.1.4 It shall be unlawful to park a motor vehicle so as to block or restrict access to a Town Landing.

8.1.5 It shall be unlawful to abandon a vessel within the waters or upon the shoreline of Harpswell.

8.1.6 It shall be unlawful to abandon lobster, crab and shellfish cars or crates within the waters of Harpswell.

8.1.7 It shall be unlawful to abandon a mooring within the waters of Harpswell.

8.1.8 It shall be unlawful to refuse to obey any lawful Order of the Harbormaster.

8.1.9 It shall be unlawful for any person or persons to establish or maintain a residence on any type of vessel within waters of Harpswell unless the vessel has established access to property with shoreline on the waters of Harpswell which is equipped with waste pump-out facilities and the vessel contains sewage holding tankage attached to each marine toilet and the vessel’s sewage system is not equipped with “Y” valves to permit overboard discharge.

8.1.10 It shall be unlawful to leave a vessel at a Town Wharf, Dock or Float for a period exceeding thirty (30) minutes without the permission of the Harbormaster; provided, however, that the Board of Selectmen may, after notice and hearing, adopt rules and regulations governing the use of a Town Wharf, Dock or Float, including, without limitation, rules and regulations that establish a systematic approach for the Harbormaster to grant permission for vessels to exceed the thirty (30) minute tie-up limit and a fee schedule related to the same.

8.1.11 The Harbormaster may remove, or cause to be removed, to the Transfer Station or other location designated in writing by the Board of Selectmen any unattended dinghy/skiff/vessel obstructing use of a Town Wharf, Dock or Float after due effort has been made by the Harbormaster to notify the owner or operator of said
dinghy/skiff/vessel of the violation. Any dinghy/skiff/vessel filled with water to
the seat level shall be considered unattended. The vessel owner shall be
responsible for all associated costs of removal.

8.1.12 The Harbormaster shall have the general authority to supervise use of the Town
Wharf, Dock or Float and shall be responsible for the neat and orderly use of the
Town Wharf, Dock or Float and for the assignment of any float space.

8.2 Violation of Ordinance

Except as provided in Title 38 M.R.S.A. § 13, as may be amended from time to time, a
violation of this Ordinance shall be a civil violation and may be prosecuted and relief,
fees, fines and penalties granted and assessed pursuant to the provisions of Title 30-A
M.R.S.A. § 4452, as may be amended from time to time. For purposes of this Section,
each day that a violation continues shall be considered a separate offense.

8.3 Enforcement of Ordinance

The Harbormaster shall have the authority and responsibility to enforce this Ordinance
and the provisions of Title 38, Chapter 1, Subchapter 1, as may be amended from time to
time. All law enforcement officers of the State of Maine, including Harbormasters and
their deputies, shall have the authority to enforce this Ordinance and, in the exercise
thereof, shall have the authority to stop and board any vessel found in violation of this
Ordinance. It shall be unlawful for any operator of such vessel to fail to stop upon
request of such officer and violation shall be punishable as provided in Title 38 M.R.S.A.
§ 282, as may be amended from time to time.

8.4 Appeals

Any person aggrieved by a decision of the Harbormaster may appeal the decision to the
Committee within thirty (30) days of the Harbormaster’s decision. Decisions of the
Committee, when acting as a Board of Appeals, may be appealed to the Board of
Selectmen within thirty (30) days of the Committee’s decision. Decisions of the Board of
Selectmen may be appealed to Superior Court within thirty (30) days of the Board of
Selectmen’s written decision.
Town of Harpswell

Basic Land Use Ordinance

Adopted February 3, 1994
As Amended March 15, 1997
As Amended March 6, 1999
As Amended March 11, 2000
As Amended August 23, 2001
As Amended March 16, 2002
As Amended November 23, 2002
As Amended March 8, 2003
As Amended May 20, 2004
As Amended March 13, 2005
As Amended March 11, 2006
As Amended March 10, 2007
As Amended March 14, 2009
As Amended March 20, 2010
As Amended March 12, 2011
As Amended June 12, 2012
As Amended March 9, 2013
As Amended March 15, 2014
As Amended March 14, 2015
As Amended March 12, 2016
As Amended March 11, 2017

Replaces Land Use Ordinance adopted February 3, 1994
# BASIC LAND USE ORDINANCE

## TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1</td>
<td>Purpose</td>
<td>1</td>
</tr>
<tr>
<td>Section 2</td>
<td>Authority</td>
<td>1</td>
</tr>
<tr>
<td>Section 3</td>
<td>Applicability</td>
<td>1</td>
</tr>
<tr>
<td>Section 4</td>
<td>Effective Date</td>
<td>1</td>
</tr>
<tr>
<td>Section 5</td>
<td>Availability</td>
<td>2</td>
</tr>
<tr>
<td>Section 6</td>
<td>Severability</td>
<td>2</td>
</tr>
<tr>
<td>Section 7</td>
<td>Conflicts with Other Ordinances</td>
<td>2</td>
</tr>
<tr>
<td>Section 8</td>
<td>Amendments</td>
<td>2</td>
</tr>
<tr>
<td>Section 9</td>
<td>Land Use Requirements</td>
<td>2</td>
</tr>
<tr>
<td>Section 10</td>
<td>Nonconformance</td>
<td>2</td>
</tr>
<tr>
<td>10.1</td>
<td>Purpose</td>
<td>2</td>
</tr>
<tr>
<td>10.2</td>
<td>General</td>
<td>3</td>
</tr>
<tr>
<td>10.2.1</td>
<td>Transfer of Ownership</td>
<td>3</td>
</tr>
<tr>
<td>10.2.2</td>
<td>Repair and Maintenance</td>
<td>3</td>
</tr>
<tr>
<td>10.3</td>
<td>Nonconforming Structures</td>
<td>3</td>
</tr>
<tr>
<td>10.3.1</td>
<td>Expansions</td>
<td>3</td>
</tr>
<tr>
<td>10.3.2</td>
<td>Relocation, Reconstruction or Replacement</td>
<td>4</td>
</tr>
<tr>
<td>10.3.2.1</td>
<td>Relocation</td>
<td>4</td>
</tr>
<tr>
<td>10.3.2.2</td>
<td>Reconstruction or Replacement</td>
<td>4</td>
</tr>
<tr>
<td>10.3.2.3</td>
<td>Authority of Planning Board to Exercise Jurisdiction over an Application</td>
<td>5</td>
</tr>
<tr>
<td>10.3.2.4</td>
<td>Greatest Practical Extent Setback Factors</td>
<td>6</td>
</tr>
<tr>
<td>10.4</td>
<td>Nonconforming Lots</td>
<td>6</td>
</tr>
<tr>
<td>10.4.2</td>
<td>Nonconforming Lots</td>
<td>6</td>
</tr>
<tr>
<td>10.4.2.1</td>
<td>Setback Reduction for Small Nonconforming Lots</td>
<td>6</td>
</tr>
<tr>
<td>10.4.3</td>
<td>Contiguous Built Lots</td>
<td>7</td>
</tr>
<tr>
<td>10.4.4</td>
<td>Contiguous Lots – Vacant or Partially Built</td>
<td>7</td>
</tr>
<tr>
<td>10.4.5</td>
<td>Creation of Nonconforming Lot(s) for Preservation or Conservation Purposes</td>
<td>8</td>
</tr>
<tr>
<td>Section 11</td>
<td>Standards</td>
<td>9</td>
</tr>
<tr>
<td>11.1</td>
<td>Minimum Lot Standards</td>
<td>10</td>
</tr>
<tr>
<td>11.2</td>
<td>Minimum Lot Frontage</td>
<td>10</td>
</tr>
<tr>
<td>11.2.1</td>
<td>Off-Shore Island</td>
<td>10</td>
</tr>
<tr>
<td>11.3</td>
<td>Principal and Accessory Structures</td>
<td>10</td>
</tr>
<tr>
<td>11.3.1</td>
<td>Setback</td>
<td>10</td>
</tr>
<tr>
<td>11.3.2</td>
<td>Height of Structures</td>
<td>11</td>
</tr>
<tr>
<td>11.3.3</td>
<td>Accessory Temporary Living Accommodation</td>
<td>11</td>
</tr>
<tr>
<td>11.4</td>
<td>Subsurface Waste Disposal</td>
<td>12</td>
</tr>
<tr>
<td>11.4.3</td>
<td>Existing Use – Continuation of Use</td>
<td>13</td>
</tr>
<tr>
<td>11.4.4</td>
<td>Change in Use</td>
<td>13</td>
</tr>
<tr>
<td>Section</td>
<td>Title</td>
<td>Page</td>
</tr>
<tr>
<td>---------</td>
<td>----------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>11.5</td>
<td>Roads and Driveways</td>
<td>13</td>
</tr>
<tr>
<td>11.6</td>
<td>Storm Water Runoff</td>
<td>13</td>
</tr>
<tr>
<td>11.7</td>
<td>Campgrounds</td>
<td>14</td>
</tr>
<tr>
<td>11.8</td>
<td>Individual Private Campsites and Temporary Residential Use</td>
<td>14</td>
</tr>
<tr>
<td>11.9</td>
<td>Agriculture</td>
<td>14</td>
</tr>
<tr>
<td>11.10</td>
<td>Earth Moving, Erosion and Sedimentation Control</td>
<td>14</td>
</tr>
<tr>
<td>11.11</td>
<td>Water Quality Protection</td>
<td>14</td>
</tr>
<tr>
<td>11.12</td>
<td>Accessory Residential Units</td>
<td>14</td>
</tr>
<tr>
<td>11.13</td>
<td>Utilities and Essential Services</td>
<td>14</td>
</tr>
<tr>
<td>11.14</td>
<td>Soils</td>
<td>14</td>
</tr>
<tr>
<td>11.15</td>
<td>Timber Harvesting and Vegetative Buffers</td>
<td>15</td>
</tr>
<tr>
<td>11.16</td>
<td>Home Occupations</td>
<td>16</td>
</tr>
<tr>
<td>11.17</td>
<td>Archeological and Historic Sites</td>
<td>16</td>
</tr>
<tr>
<td>11.18</td>
<td>Workforce Housing</td>
<td>16</td>
</tr>
<tr>
<td>11.18.1</td>
<td>Purpose</td>
<td>16</td>
</tr>
<tr>
<td>11.18.2</td>
<td>Applicability</td>
<td>16</td>
</tr>
<tr>
<td>11.18.2.1</td>
<td>Single Lot Development Standards</td>
<td>16</td>
</tr>
<tr>
<td>11.18.2.2</td>
<td>New Subdivisions</td>
<td>17</td>
</tr>
<tr>
<td>11.18.3</td>
<td>Standards for Development of Workforce Housing Subdivisions</td>
<td>17</td>
</tr>
<tr>
<td>11.18.3.1</td>
<td>Density Bonus Provisions</td>
<td>17</td>
</tr>
<tr>
<td>11.18.3.2</td>
<td>Plan Notations and Recorded Documentation</td>
<td>18</td>
</tr>
<tr>
<td>11.18.3.3</td>
<td>Location</td>
<td>18</td>
</tr>
<tr>
<td>11.18.3.4</td>
<td>Neighborhood Compatibility</td>
<td>18</td>
</tr>
<tr>
<td>11.18.3.5</td>
<td>Workforce Housing Covenant</td>
<td>18</td>
</tr>
<tr>
<td>11.18.3.6</td>
<td>Development of Workforce Housing Lots</td>
<td>19</td>
</tr>
<tr>
<td>11.18.3.7</td>
<td>Off Site Option</td>
<td>19</td>
</tr>
<tr>
<td>11.18.3.8</td>
<td>Administration of Workforce Housing</td>
<td>19</td>
</tr>
<tr>
<td>11.18.4</td>
<td>Qualified Buyers</td>
<td>19</td>
</tr>
<tr>
<td>11.19</td>
<td>Swimming Pools</td>
<td>19</td>
</tr>
<tr>
<td>11.20</td>
<td>Wheelchair Ramps and Other Accessibility Structures</td>
<td>20</td>
</tr>
<tr>
<td>12</td>
<td>Section 12 Administration</td>
<td>20</td>
</tr>
<tr>
<td>12.1</td>
<td>Administrative Bodies and Agents</td>
<td>20</td>
</tr>
<tr>
<td>12.1.1</td>
<td>Code Enforcement Officer (CEO)</td>
<td>20</td>
</tr>
<tr>
<td>12.1.2</td>
<td>Powers and Duties</td>
<td>20</td>
</tr>
<tr>
<td>12.2</td>
<td>Planning Board</td>
<td>21</td>
</tr>
<tr>
<td>12.2.1</td>
<td>Appointment</td>
<td>21</td>
</tr>
<tr>
<td>12.2.2</td>
<td>Organization and Rules</td>
<td>21</td>
</tr>
<tr>
<td>12.2.3</td>
<td>Duties and Powers</td>
<td>22</td>
</tr>
<tr>
<td>12.2.3.2</td>
<td>Notification to Abutters</td>
<td>22</td>
</tr>
<tr>
<td>12.2.3.3</td>
<td>Technical Review Fee</td>
<td>22</td>
</tr>
<tr>
<td>12.3</td>
<td>Board of Appeals</td>
<td>23</td>
</tr>
<tr>
<td>12.3.1</td>
<td>Powers and Duties</td>
<td>23</td>
</tr>
<tr>
<td>Section</td>
<td>Title</td>
<td>Page</td>
</tr>
<tr>
<td>---------</td>
<td>----------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>12.3.1.1</td>
<td>Administrative Appeals</td>
<td>23</td>
</tr>
<tr>
<td>12.3.1.2</td>
<td>Variance Requests</td>
<td>23</td>
</tr>
<tr>
<td>12.3.1.3</td>
<td>Boundary Line Determinations</td>
<td>23</td>
</tr>
<tr>
<td>12.3.1.4</td>
<td>Notification to Abutters</td>
<td>23</td>
</tr>
<tr>
<td>12.4</td>
<td>Definitions</td>
<td>23</td>
</tr>
<tr>
<td>13</td>
<td>Permits, Approvals and Certificates of Compliance Required</td>
<td>24</td>
</tr>
<tr>
<td>13.1</td>
<td>Permits or Approvals</td>
<td>24</td>
</tr>
<tr>
<td>13.2</td>
<td>Certificates of Compliance</td>
<td>24</td>
</tr>
<tr>
<td>13.2.1</td>
<td>Temporary Certificates of Compliance</td>
<td>24</td>
</tr>
<tr>
<td>13.3</td>
<td>Table 1 - Land Uses and Activities</td>
<td>25</td>
</tr>
<tr>
<td>13.3</td>
<td>Permit and Approval Application</td>
<td>29</td>
</tr>
<tr>
<td>13.4</td>
<td>Procedure for Administering Permits</td>
<td>30</td>
</tr>
<tr>
<td>13.5</td>
<td>Fee and Time Limits</td>
<td>32</td>
</tr>
<tr>
<td>13.6</td>
<td>Violation, Enforcement, Penalties and Legal Actions</td>
<td>33</td>
</tr>
<tr>
<td>13.3</td>
<td>Table 1 - Land Uses and Activities</td>
<td>25</td>
</tr>
<tr>
<td>13.3</td>
<td>Permit and Approval Application</td>
<td>29</td>
</tr>
<tr>
<td>13.4</td>
<td>Procedure for Administering Permits</td>
<td>30</td>
</tr>
<tr>
<td>13.5</td>
<td>Fee and Time Limits</td>
<td>32</td>
</tr>
<tr>
<td>13.6</td>
<td>Violation, Enforcement, Penalties and Legal Actions</td>
<td>33</td>
</tr>
<tr>
<td>14</td>
<td>Variances and Appeals</td>
<td>34</td>
</tr>
<tr>
<td>14.1</td>
<td>Variances</td>
<td>34</td>
</tr>
<tr>
<td>14.1.4.3</td>
<td>Disability Variance</td>
<td>35</td>
</tr>
<tr>
<td>14.1.4.4</td>
<td>Setback Variance for One-Unit Residential Uses</td>
<td>35</td>
</tr>
<tr>
<td>14.1.4.5</td>
<td>Practical Difficulty Variance</td>
<td>36</td>
</tr>
<tr>
<td>14.1.5</td>
<td>Variance Recorded</td>
<td>36</td>
</tr>
<tr>
<td>14.1.6</td>
<td>Interpretation of Ordinance Requirements</td>
<td>36</td>
</tr>
<tr>
<td>14.2</td>
<td>Appeals</td>
<td>37</td>
</tr>
<tr>
<td>14.2.1</td>
<td>Administrative Appeal</td>
<td>37</td>
</tr>
<tr>
<td>14.3</td>
<td>Decision by Board of Appeals</td>
<td>37</td>
</tr>
<tr>
<td>14.4</td>
<td>Appeal to Superior Court</td>
<td>38</td>
</tr>
<tr>
<td>14.5</td>
<td>Reconsideration</td>
<td>38</td>
</tr>
<tr>
<td>Appendix I</td>
<td>Shoreland Zoning Map</td>
<td>39</td>
</tr>
</tbody>
</table>

*THIS UNOFFICIAL TABLE OF CONTENTS IS NOT A PART OF THE ORDINANCE AND IS PROVIDED FOR CONVENIENCE ONLY.*
SECTION 1. PURPOSE

The purpose of this Ordinance is to provide for reasonable and orderly development within all areas of the Town while protecting the health, safety, and welfare of its citizens.

This Ordinance seeks to preserve the character of Harpswell as a residential, fishing, and vacation community with clean waters, healthy wetland functions and wildlife habitats, scenic attractiveness and a sense of openness. It seeks also to preserve to the maximum extent possible, traditional rights of landowners to use their lands as they desire, while at the same time protecting nearby residential owners from excessive conflicting uses that might degrade property values and damage the attractiveness of the community to the detriment of all.

SECTION 2. AUTHORITY

This Ordinance is adopted under powers granted to the town by 30-A M.R.S.A. §§ 3001 and 4352, as may be amended from time to time.

Throughout this Ordinance there are "Citizen's Notes". These notes shall not be considered part of this Ordinance as adopted by the Town, but shall only be considered as aids for citizens to use this Ordinance and as guides to the intent of Ordinance provisions and their proper interpretation.

Section Titles of this Ordinance do not constitute official ordinance language. These Titles shall only be considered as an aid for citizens using this Ordinance.

SECTION 3. APPLICABILITY

This Ordinance applies to all dwellings, accessory structures, and uses that are not subject to Shoreland Zoning. The provisions of this Ordinance pertaining to nonconformance apply to all nonconforming, nonresidential structures, developments, and uses not subject to the Shoreland Zoning Ordinance. In addition, the procedural and administrative provisions contained in this Ordinance govern the administration of all the Town's land use ordinances. Insofar as this Ordinance is inconsistent with state law as it relates to mobile home parks, the provisions of 30-A M.R.S.A. § 4358, as may be amended from time to time, shall prevail.

Citizen’s Note: For creation of subdivisions, see Subdivision Ordinance. For activities in the Shoreland Zone requiring permits, see Shoreland Zoning Ordinance. Multi-family dwellings and nonresidential development, wherever located, are also subject to the provisions of the Site Plan Review Ordinance.

SECTION 4. EFFECTIVE DATE

The effective date of this Ordinance is September 15, 1997.
SECTION 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.

SECTION 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.

SECTION 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, the more restrictive provision shall control unless state law provides otherwise.

SECTION 8. AMENDMENTS

Amendments may be made by a majority vote of the Town at any Harpswell Town Meeting and shall take effect upon enactment unless otherwise specified.

Amendments may be initiated by a majority vote of the Planning Board, by a majority vote of the Board of Selectmen or by written petition signed by a number of registered voters equal to ten percent (10%) of Harpswell voters voting in the last gubernatorial election.

SECTION 9. LAND USE REQUIREMENTS

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

SECTION 10. NONCONFORMANCE

10.1. Purpose. It is the intent of this Ordinance to promote land use conformities, except that lawful nonconforming conditions that existed before September 15, 1997 and the effective dates of any amendments to this Ordinance creating new nonconforming conditions shall be allowed to continue, subject to the requirements set forth in this section.

Citizen’s Note: Nonconformance should not be considered illegal or unacceptable. Nonconformance means lots of record or uses that are grandfathered because they were in conformance with the standards in effect before the adoption of this Ordinance or any
amendments creating new nonconforming conditions. The concerned party is encouraged to read through this Ordinance and contact a town official should a question arise. If the property is located in the Shoreland Zone, see the relevant provisions in the Shoreland Zoning Ordinance.

10.2. General.

10.2.1. Transfer of Ownership. Nonconforming structures, lots and uses may be transferred, and the new owner may continue the nonconforming use or continue to use the nonconforming structure or lot, subject to the provisions of this Ordinance.

10.2.2. Repair and Maintenance. This Ordinance allows, without a permit, the normal upkeep and maintenance of nonconforming uses and structures including repair or renovations that do not involve expansion of the nonconforming use or structure, and such other changes in a nonconforming use or structure as Federal, State, or local building and safety codes may require.

Citizen’s Note: See Definitions Addendum for the definitions of nonconforming structures, nonconforming uses, and nonconforming lots.

10.3. Nonconforming Structures

10.3.1. Expansions. A nonconforming 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 nonconformity of the structure. For the purposes of this Ordinance, an increase to the nonconformity of the structure shall mean:

- any expansion towards a property line or road that decreases the shortest existing nonconforming setback distance from property line or road, or
- any expansion which would cause the total area covered by the structures, driveways, parking lots, and other impermeable surfaces to exceed twenty percent (20%) of the total lot area, or
- any expansion which would cause the structure to exceed the height limits of this Ordinance.

The shortest existing nonconforming setback distance from a property line or a road may not be measured from an existing area, such as a small patio, terrace, landing, or small set of stairs, used mainly for access to a structure.

Citizen’s Note: It should be understood that small patios, terraces, landings, or small sets of stairs within minimum setbacks do not change the setback of the adjacent structure and cannot be used to justify expansion of any other part of the structure into that setback.
10.3.1.1. After September 15, 1997, or the effective date of any amendment to this Ordinance creating any new nonconforming conditions, if any portion of an existing structure is less than the required setback from the road or property line, that portion of the structure shall not be expanded in floor area or volume, by more than thirty percent (30%), during the lifetime of the structure.

10.3.1.2. Construction of a foundation beneath an existing building that is nonconforming as to setbacks shall not be considered an expansion of the structure provided that:

10.3.1.2.1. The foundation shall not extend beyond the exterior dimension of the building as it existed on September 15, 1997 or the effective date of any amendment to this Ordinance creating any new nonconforming condition, or as expanded in accordance with Section 10.3.1.1.

*Citizen's Note:* Disputed decisions may be appealed to the Board of Appeals.

10.3.2. Relocation, Reconstruction, or Replacement

10.3.2.1. Relocation. A nonconforming 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 CEO, and provided that the applicant demonstrates that the present sub-surface wastewater disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal 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 nonconforming. Any relocation approved by the CEO pursuant to this subsection shall be endorsed in writing by the CEO.

10.3.2.2. Reconstruction or Replacement. Any nonconforming structure that is located less than the required setback from a property line or road and which is removed, damaged, or destroyed by more than fifty percent (50%) of the assessed value of the structure, as adjusted by the Town’s assessment ratio as most recently certified by the Assessors to the State of Maine, before such damage, destruction, or removal, as determined by the Assessors or their designee in consultation with the CEO, may be reconstructed or replaced provided that a permit is obtained within one (1) year of the date of said damage, destruction, or removal, and provided such replacement or reconstruction is in compliance with the setback requirements to the greatest practical extent as determined by the CEO in accordance with the purposes of this Ordinance; provided, however, that any nonconforming structure that is located less than the required setback from a property line or road and that is damaged or destroyed by fire or any cause other than the willful act or negligence of the owner or the owners agent may be reconstructed on the same footprint as the structure that was destroyed. In no case shall a structure be reconstructed or replaced so as to increase its nonconformity. Any reconstruction or replacement approved by the CEO pursuant to this subsection shall be endorsed in writing by the CEO.
10.3.2.3 Authority of Planning Board to Exercise Jurisdiction over an Application.

Except as provided for below, for any application for relocation of a nonconforming structure, or for the reconstruction or replacement of a nonconforming structure that was removed, damaged, or destroyed by more than fifty percent (50%) of the adjusted assessed value of the structure, made under Section 10.3.2, the CEO shall provide written notice to the Planning Board and all property owners within two hundred fifty (250) feet of the property as listed on the Town’s most recent assessing records that a relocation, reconstruction or replacement application has been received and is being reviewed. The opportunity for the Planning Board to take jurisdiction under this provision and to receive notice shall not apply in the following situations:

(a) The relocation, replacement, or reconstruction will be carried out such that the structure complies with all applicable setback requirements, or
(b) The structure being relocated is an accessory structure that meets all the following requirements:
   1) The floor area of the existing nonconforming structure is less than two hundred (200) square feet,
   2) The floor area or volume of the structure will not be increased,
   3) The structure is and will continue to be accessory to the principal use of the property,
   4) The structure will not be served by water, and
   5) The structure has not been and will not be used for human habitation.
(c) The structure being reconstructed or replaced is an accessory structure that meets all of the following requirements:
   1) The floor area of the existing nonconforming structure is less than two hundred (200) square feet,
   2) The floor area and volume of the replacement or reconstructed structure will not be larger than one hundred fifty percent (150%) of the floor area and volume of the existing structure,
   3) The existing structure is accessory to the principal use of the property and the replacement or reconstructed structure will continue to be so,
   4) The replacement or reconstructed structure will not be served by water, and
   5) The replacement or reconstructed structure will not be used for human habitation.

During that forty (40) day time period, the Planning Board may elect to exercise jurisdiction over the relocation, reconstruction or replacement application. The Planning Board’s review, if any, shall be governed by the same review standards as govern the CEO review. The CEO shall not issue any permit under this Section until the earlier of (a) forty (40) days after the date that the CEO provides such written notice to the Planning Board and all property owners within two hundred fifty (250) feet of the property as listed on the Town’s most recent assessing records or (b) the date the Planning Board declines to exercise jurisdiction over the application. Any relocation, reconstruction or replacement application approved by the Planning Board pursuant to this subsection shall be endorsed in writing. Failure of any property owner to receive the notice sent under this subsection does not invalidate any action taken by the CEO or Planning Board.
10.3.2.4. Greatest Practical Extent Setback Factors. In determining whether the building relocation, reconstruction or replacement meets the setback to the greatest practical extent, the CEO or Planning Board, as applicable, 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 systems and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

10.4. Nonconforming Lots

10.4.1. Nonconforming lots whether located in legal subdivisions or elsewhere are subject to the provision of this section.

10.4.2. Nonconforming Lots. A nonconforming lot of record as of September 15, 1997 or the effective date of any amendment to this Ordinance creating any new nonconforming conditions 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 are met; provided, further, that reduced setback requirements may be applicable to those lots that meet the criteria set forth in Section 10.4.2.1. Variances relating to setback or other requirements not involving lot size or frontage shall be obtained by action of the Board of Appeals.

The status of a nonconforming lot of record shall not change as a result of realigning a common boundary line with the owner of a contiguous parcel of land, provided that (a) neither lot ends up more nonconforming after the transaction than it was prior to the transaction, as evidenced in writing by a land surveyor licensed to practice in Maine; (b) the parties cause copies of the recorded deeds to be submitted to the CEO within thirty (30) days of the recording of the deeds at the registry; and (c) no permits or approvals relating to such nonconforming lot shall be issued unless or until the applicant complies with subsections (a) and (b) herein.

10.4.2.1. Setback Reduction for Small Nonconforming Lots. The setback of structures from lot lines may be reduced to five (5) feet and the setback of structures from traveled ways may be reduced to ten (10) feet in order to allow the expansion or construction of a structure to be used solely for one-unit residential purposes or an accessory structure appurtenant to it, provided that the following conditions are met:

(a) The nonconforming lot in question was lawfully created prior to September 15, 1997 and is evidenced by a recorded deed or subdivision plan;

(b) The lot meets the following size requirements:

(i) less than one-quarter (¼) acre (i.e., less than 10,890 square feet) in size; and

(ii) if, as determined by the Code Enforcement Office, less than one-half (1/2) of the eligible owner(s) of lots under Section 10.4.2.1(b)(i) do not apply for the reduced setback described herein within two (2) years of the adoption of this subsection, then owner(s) of lots less than one-half (1/2) acre (i.e. less than 21,780 square feet) in size may apply for the reduced setback established herein; provided, however, that no more than fifty percent (50%) of the total number of eligible lots will be permitted the reduced setbacks described herein;
(c) The lot is not located in whole or in part within the Shoreland Zone;
(d) There exist two (2) or more other nonconforming lots meeting the size requirement then applying under Section 10.4.2.1(b) that have been improved with one-unit residential uses within a five hundred (500) foot radius of the lot in question;
(e) Neither Section 10.4.3 nor Section 10.4.4 apply to the lot; and
(f) The owner or owners of the property located along the boundary line adjacent to which the setback reduction is requested consents in writing to the reduction; and
(g) That any new structure constructed pursuant to this Section is consistent with the character of the local area in which it is to be situated, as determined by the Planning Board.

If a reduced setback is approved pursuant to this Section on previously unimproved lots, the impermeable surface coverage requirements set forth in Section 11.1.1 shall continue to apply.

If a reduced setback is approved pursuant to this Section on lots that have been previously improved with a structure, that structure shall not be expanded in floor area or volume, by thirty percent (30%) or more, during the lifetime of the structure, and the impermeable surface coverage requirement set forth in Section 11.1.1 shall not apply.

10.4.3. Contiguous Built Lots. If two (2) or more contiguous lots or parcels are in a single or joint ownership of record as of September 15, 1997 or the effective date of any amendment to this Ordinance creating any new nonconforming conditions 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 nonconforming 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 (2) or more principal uses or structures existed on a single lot of record as of September 15, 1997 or the effective date of any amendment to this Ordinance creating new nonconforming conditions, each may be sold as a separate lot, provided that State Minimum Lot Size Law and Subsurface Wastewater Disposal 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.

10.4.4. Contiguous Lots - Vacant or Partially Built. If two (2) or more contiguous lots or parcels are in single or joint ownership of record at the time of or since September 15, 1997 or the effective date of any amendment to this Ordinance creating new nonconforming conditions, if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one (1) 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 two (2) or more contiguous lots, at least one (1) of which is nonconforming, owned by the same person or persons as of September 15, 1997 or the effective date of any amendment to this Ordinance creating new nonconforming conditions and recorded in the Registry of Deeds, if the lot is served by the public sewer, or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Rules and:
10.4.4.1. Each lot contains at least one hundred (100) feet of road frontage and at least twenty thousand (20,000) square feet of lot area; or

10.4.4.2. Any lots that do not meet the frontage and lot size requirements of subparagraph 10.4.3. Are reconfigured or combined so that each new lot contains at least one hundred (100) feet of road frontage and twenty thousand (20,000) square feet of lot area.

10.4.5. Creation of Nonconforming Lot(s) for Preservation or Conservation Purposes
An existing conforming lot or a nonconforming lot may be divided so as to create not more than two (2) lots, one (1) or both of which are nonconforming lots, provided that the Harpswell Planning Board finds that the following conditions are met:

10.4.5.1. One (1) of the resulting lots is conveyed to a governmental body or a nonprofit tax exempt organization (preservation grantee) for conservation or preservation purposes.

10.4.5.2. The division does not create or exacerbate a public health or safety problem on the nonconforming lot not to be conveyed to a preservation grantee (the remaining lot) to the extent that the remaining lot does not have adequate (as defined by the appropriate code) well and septic waste disposal options.

10.4.5.3. If the lot conveyed to the preservation grantee is undeveloped land, or is to be returned to an undeveloped state, the deed or instrument of conveyance shall contain restrictions which require that the land be preserved or maintained in its natural state (although not necessarily "forever wild") in perpetuity for one (1) or more generally recognized purposes which benefit the natural, cultural, or architectural history of the Town or which preserves a diminishing or threatened place, parcel of land, resource, or habitat.

10.4.5.4. If the lot conveyed to the preservation grantee contains a pre-existing structure or improvement, the structure or improvement must have a demonstrable historic, cultural or architectural importance and the deed or instrument of conveyance shall contain restrictions which require that the land and the improvements thereon be preserved and maintained so as to protect and preserve said historic, cultural or architectural importance. No structure on the lot conveyed to a preservation grantee pursuant to this section may be inhabited as a dwelling.
SECTION 11. STANDARDS

11.1. Minimum Lot Standards

AREAS OF TOWN NOT SUBJECT TO SHORELAND ZONING\textsuperscript{1,2,3}

<table>
<thead>
<tr>
<th></th>
<th>AREAS LOCATED OUTSIDE OF A SUBDIVISION</th>
<th>AREAS LOCATED WITHIN A SUBDIVISION\textsuperscript{4}</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
<tr>
<td>ROAD FRONTAGE (FT)</td>
<td>150\textsuperscript{4}</td>
<td>150\textsuperscript{4}</td>
</tr>
<tr>
<td>PROPERTY LINE SETBACK (FT)</td>
<td>See Section 11.3.1</td>
<td>See Section 11.3.1</td>
</tr>
<tr>
<td>ROAD SETBACK (FT)</td>
<td>See Section 11.3.1</td>
<td>See Section 11.3.1</td>
</tr>
<tr>
<td>STRUCTURE HEIGHT (FT)</td>
<td>32</td>
<td>32</td>
</tr>
</tbody>
</table>

1. For uses in the Shoreland Zone, see Sections 15.1 and 15.2 of the Shoreland Zoning Ordinance and the Site Plan Review Ordinance.

2. Nonresidential development in these areas is governed by the Site Plan Review Ordinance.

3. For any road serving more than two (2) lots or dwelling units, the road must comply with the requirements of the Town of Harpswell Road Ordinance. For any lot to which access is only by one (1) or more roads terminating at the lot, no minimum road frontage is required provided that access to any development on the lot is wide enough to accommodate emergency vehicles but in no event less than twelve (12) feet in width.

4. The minimum lot size and road frontage requirements may be reduced for lots in subdivisions developed in accordance with the Flexible Lot Size Subdivision provisions of the Subdivision Ordinance.

5. The frontage requirement for lots on a hammerhead or T-shaped turnaround for dead end roads in a subdivision may be reduced to fifty (50) feet where no future road is either feasible or provided for on the subdivision plan, provided that all of the requirements of the Town of Harpswell Road Ordinance are met.

11.1.1. The total area covered by all structures, driveways, parking lots, and other impermeable surfaces shall not exceed twenty percent (20\%) of the total area of the lot with the following exceptions:

11.1.1.1. Lots in Flexible Lot Size subdivisions that have a lot area of less than 40,000 square feet may have up to 7,500 square feet of impermeable surface.
11.1.1.2. Lots with a principal residential use utilizing green infrastructure and low impact development (LID) techniques may have up to twenty-five (25%) percent impermeable surface.

11.1.1.3. Lots with a principal nonresidential use utilizing green infrastructure and low impact development (LID) techniques may have up to fifty (50%) percent impermeable surface.

11.1.2. 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.

11.1.3. The following land shall not be included in the calculation of the area of a lot for the purposes of meeting minimum lot size or other density or dimensional requirements:

11.1.3.1 Land below the minimum high water line of a great pond, stream, or tributary stream,

11.1.3.2 Land below the HAT of a coastal wetland,

11.1.3.3 Land below the upland edge of a freshwater wetland with a contiguous area of more than twenty thousand (20,000) square feet,

11.1.3.4 Land which is part of a road, or a transportation right-of-way, or easement serving more than two (2) lots, except rights-of-way or easements used exclusively for pedestrian access, and

11.1.3.5 Land created by the filling or draining of a great pond, stream, tributary stream, or coastal or freshwater wetland.

11.2. Minimum Lot Frontage

11.2.1. Off-Shore Island. Lots on off-shore islands not covered by Shoreland Zoning will be exempt from Frontage requirements.

11.3. Principal and Accessory Structures

11.3.1. Setback. All principal structures and expansions of existing principal structures shall be set back at least forty (40) feet from the edge of the traveled way and at least twenty (20) feet from all lot lines; provided, however, that if more than one (1) traveled way abuts a lot, the dwelling need only be set back from the traveled way that serves as access to the driveway for the lot. All accessory structures shall be set back at least twenty (20) feet from all lot lines or the edge of a traveled way, whichever is more restrictive. If the location of a property line along a traveled way is unknown, the setback for accessory structures shall be forty (40) feet from the edge of the traveled way.
11.3.1.1. One accessory structure not to exceed eighty (80) square feet and not to exceed ten feet six inches (10’6”) in height may intrude up to ten (10) feet into a sideline or rear setback without the need for a variance if the CEO determines that the proposed location meets the setback requirements to the greatest practical extent as described in Section 10.3.2.4, has been consented to in writing by the property owner(s) abutting the lot line in question, and will meet all other requirements of the ordinance.

11.3.2. Height of Structures. All principal and accessory structures shall not exceed thirty-two (32) feet in height. All expansions of principal and accessory structures that increase the footprint of the structure shall not exceed thirty-two (32) feet in height. For any principal or accessory structure existing as of March 10, 2007 that lawfully exceeds thirty-two (32) feet in height, such structure may be expanded without the need for a variance provided that (a) the expansion does not increase the footprint of the structure; and (b) the expansion does not exceed the greatest height of the existing structure. Expansions of nonconforming structures must comply with all other expansion limitations of this Ordinance. The CEO shall review any proposed expansion of a structure and shall determine, in writing, whether the requirements of this subsection are met prior to the issuance of any permit. This subsection does not apply to structures having no floor area, such as transmission towers, windmills, antennas and similar structures.

The height of a structure shall be determined by using the vertical distance, as measured from halfway between the mean original grade at the downhill side of the structure and the mean original grade at the uphill side of the structure to the highest point of the structure, excluding chimneys, steeples, antennas and similar appurtenances which have no floor area. Notwithstanding the preceding sentence, cupolas or similar portions of a structure having no floor area and exceeding any of the following dimensions (a) a side wall of sixteen (16) square feet; (b) a side wall of four (4) feet in height; (c) sixteen (16) square feet of horizontal area; or (d) a twelve/twelve (12/12) roof pitch, shall be included in the measurement of the height of a structure.

If the measurement cannot be made from the original grade where the structure is to be located, the CEO shall establish a reasonable approximation of original grade for the purposes of determining height.

11.3.3. Accessory Temporary Living Accommodation. During the construction or reconstruction of a one-unit residential use, a property owner may place an accessory temporary living accommodation on the lot in conformance with this section. Prior to installing the accessory temporary living accommodation on the lot, the property owner must obtain a temporary certificate of compliance from the Code Enforcement Officer (CEO). The CEO shall issue the temporary certificate only if he/she finds that all of the provisions of this section have been met. The temporary certificate of compliance shall be for a period of not more than twelve (12) months. The owner may apply for up to two (2) twelve (12) month renewals of the temporary compliance permit and the CEO shall approve such renewals only if he/she finds that the property owner is in compliance with all of the provisions of this section.

The placement and use of the accessory temporary living accommodation shall conform to all of the following requirements:
11.3.3.1. The accessory temporary living accommodation shall be a travel trailer, recreational vehicle, tent, or other similar enclosure that is not permanently attached to the ground.

11.3.3.2. The temporary living accommodation shall have a maximum of three hundred (300) square feet of area that can be occupied.

11.3.3.3. The accommodation shall be used only for the temporary living quarters of the property owner and her/his immediate family while construction is in progress on the home.

11.3.3.4. The temporary living accommodation shall be located on the lot in full conformance with the shoreland and property line setbacks.

11.3.3.5. The temporary living accommodation shall not be located on any type of permanent foundation and if the accommodation is a travel trailer, recreational vehicle, or similar mobile enclosure with integral wheels, the wheels shall remain on the vehicle while it is on the lot.

11.3.3.6. The owner shall prepare a written sewage disposal plan describing the proposed method and location of provisions for sewage disposal. The plan must be approved by the local plumbing inspector. When disposal is off-site, written authorization from the receiving facility or land owner is required.

A property owner who has been issued a temporary certificate of compliance for the placement of an accessory temporary living accommodation on the lot shall remove the temporary living accommodation within fifteen (15) days of being notified by the CEO in writing that the use is not in compliance with the standards and/or that the temporary certificate of compliance has expired, or shall disconnect the unit from all permanent utilities and sewage disposal provisions within fifteen (15) days of receiving a certificate of compliance for the new or replacement home. Failure to remove the accessory temporary living accommodation or disconnect it from all permanent utilities and sewage disposal provisions as required shall constitute a violation of this Ordinance subject to the penalties described in Section 13.6 herein.

11.4. Subsurface Waste Disposal

11.4.1. All subsurface wastewater disposal systems shall be permitted and installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules and to minimize adverse impacts on ground water quality.

11.4.2. All new, replacement, renovated, or expanded structures or uses generating waste, shall provide evidence of the type specified in Section 13.3.4 that an adequate wastewater disposal system can be constructed or that an adequate wastewater disposal system already exists.
11.4.3. Existing Use - Continuation of Use. The use of any legal system that exists on the effective date of this Ordinance, or which had previously been approved for installation, may be continued without change except as may be specifically covered by the Maine State Plumbing Code or deemed necessary by the plumbing inspector, for the general safety and welfare of the occupants and the public.

11.4.4. Change in Use - It shall be unlawful to make any change in the use of any system, or to erect, enlarge, or change the use of a structure that uses an existing system without the approval of the plumbing inspector and certification that such change does not result in any hazard to public health, safety, and welfare.

11.4.5. The minimum setback for new subsurface wastewater disposal fields shall be not less than one hundred (100) horizontal feet from the maximum high water line of a perennial water body. The minimum setback distance from the water body for new subsurface wastewater disposal fields shall not be reduced by variance.

11.4.6. Replacement systems shall meet the standards for replacement systems as contained in the Maine Subsurface Wastewater Disposal Rules.

11.4.7. The owner of the proposed system may locate the system or components partially on property not owned or controlled by the owner of the system, provided that the owner of the property where the system is to be located executes an easement in perpetuity for the construction, operation, replacement, and maintenance of the system, giving the system’s owner authorization to cross any land or right-of-way between the two parcels. The easement shall be filed and cross-referenced in the Registry of Deeds and the Code Enforcement Office prior to issuance of a disposal system permit. The easement shall provide sufficient buffer around the disposal field and fill material extensions for future replacement and maintenance of the system.

Citizens Note: The Town recommends that all owners of new and replacement systems install low-flow flushes and shower heads.

11.5. Roads and Driveways. Roads serving more than two (2) lots or dwelling units must comply with the requirements of the Town of Harpswell Road Ordinance.

Citizen's Note: Roads in the Shoreland Zone are also governed by the Shoreland Zoning Ordinance. Any owners of lots fronting on State Route 123, State Route 24, the Cundy's Harbor Road, or the Mountain Road are encouraged to share driveways to reduce curb cuts and improve safety. A curb cut must be approved by Maine DOT and the Town Road Commissioner.

11.6. Storm Water Runoff

11.6.1. All new construction and development shall be designed to minimize storm water runoff from the site in excess of the natural pre-development conditions. Where possible, green infrastructure and low impact development (LID) techniques (rain gardens, infiltration planters, bioswales), as well as existing natural runoff control features (berms, swales, terraces, and wooded areas) shall be retained in order to reduce runoff and encourage infiltration of stormwater.
11.6.2. Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.

11.7. Campgrounds. Campgrounds shall be subject to the same provisions as those set forth in Section 15.4 of the Shoreland Zoning Ordinance, as may be amended from time to time.

11.8. Individual Private Campsites and Temporary Residential Use. Individual private campsites and temporary residential uses shall be subject to the same provisions as those set forth in Section 15.5 of the Shoreland Zoning Ordinance, as may be amended from time to time.

11.9. Agriculture. Agriculture shall be subject to the same provisions as those set forth in Section 15.13 of the Shoreland Zoning Ordinance, as may be amended from time to time.

11.10. Earth Moving, Erosion and Sedimentation Control. Earth moving, erosion and sedimentation control shall be subject to the same provisions as those set forth in Section 15.16 of the Shoreland Zoning Ordinance, as may be amended from time to time.

11.11. Water Quality Protection. No activity shall deposit on or into the ground or discharge to the water 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 a water body. No activity shall locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity, or temperature that run off, seep, percolate, or wash into surface or ground waters so as to contaminate, pollute, or harm such waters or cause nuisances.

11.12. Accessory Residential Units. An accessory residential unit may be added to any dwelling unit provided that (a) the property is owner-occupied; (b) that Harpswell is the principal residence of the occupant(s) of the accessory residential unit; (c) a building permit is obtained; (d) all of the requirements of this Ordinance, with the exception of shore frontage, road frontage, and minimum lot size, are met; (e) all requirements of the Maine Subsurface Wastewater Disposal Rules in accordance with 22 M.R.S.A. § 42, as may be amended from time to time, are met; and (f) all requirements of the Maine State Minimum Lot Size Rules 12 M.R.S.A. § 4807, as may be amended from time to time, are met. The CEO shall have the right to inspect all accessory residential units to ensure compliance with this section.

11.13. Utilities and Essential Services. Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors and above ground facilities must be located so as to avoid crossing open areas and scenic views as identified in the Comprehensive Plan.

11.14. Soils. All land uses shall be located on soils in or upon which 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 in an on-site investigation and be prepared by state-certified professionals. Certified persons may include Maine
Certified Soil Scientists, and Maine State Certified Geologists. The report shall include an 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.

11.15. Timber Harvesting and Vegetative Buffers. Within seventy-five (75) feet, horizontal distance, from the maximum high water line of a tributary stream, harvesting of timber or clearing of existing vegetation in areas other than the Shoreland Zone, shall be conducted in accordance with the following provisions.

11.15.1. There shall be no clearcut openings greater than two hundred fifty (250) square feet in the forest canopy as measured from the outer limits of the tree crown, and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained. Selective cutting of trees within the buffer strip is permitted provided that a well distributed stand of trees and other vegetation is maintained.

11.15.2. No accumulation of slash shall be left within fifty (50) feet of the maximum high water line of a tributary stream. Slash shall either be removed or disposed of in such a manner that it lies on the ground and no part of it extends more than four (4) feet above the ground. Any debris that falls below the maximum high water line of a tributary stream shall be removed.

11.15.3. Timber harvesting equipment shall not use a water body, tributary stream, or wetland as a travel route except when:

11.15.3.1. Surface waters are frozen; and

11.15.3.2. The activity will not result in any ground disturbance.

11.15.4. All crossing 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.

11.15.5. Skid trail approaches to a water crossing shall be located and designed so as to prevent water runoff from directly entering the tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed.

11.15.6. Except for water crossings, and skid trails, the operation of machinery used in timber harvesting may not result in the exposure of mineral soil.

11.15.7. Cleared openings legally in existence as of March 10, 2001 may be maintained, but shall not be enlarged, except as permitted by this Ordinance.

11.15.8. Fields which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of this section.
11.15.9 Prior to all timber harvesting, written notification shall be provided to the Code Enforcement Officer.

11.16. Home Occupations. All home occupations are subject to the provisions of Section 15.20 of the Shoreland Zoning Ordinance setting forth performance standards for home occupations regardless of whether they are located within the Shoreland Zone.

11.17. Archeological and Historic Sites. All proposed land use activities shall be designed to protect archeological and historic sites that have been identified in the Town’s Comprehensive Plan, or by the Maine Historic Preservation Commission or the National Park Service. Any proposed land use activity involving structural development or soil disturbance on sites listed on the National Register of Historic Places shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least twenty (20) business days prior to action being taken by the applicable Town permitting authority; provided, however, that the CEO may, in the event of an emergency as determined by the CEO, take appropriate action to allow only such limited land use activity as is necessary to protect the public health, safety and welfare in order to cure the emergency situation. The Town permitting authority shall consider comments received from the Commission prior to rendering a decision on the application.

11.18. Workforce Housing

11.18.1. Purpose
The 2005 Harpswell Comprehensive Plan sets forth the need in Harpswell for the availability of Workforce Housing to maintain the diversity of Harpswell's population. To that end, this Section is intended to provide and promote the acquisition and construction of housing that is affordable for current and future generations of Harpswell residents.

11.18.2. Applicability

11.18.2.1. Single Lot Development Standards
Notwithstanding any other provision of this Ordinance to the contrary, a Workforce Housing Unit may be built upon a lot, located outside of the shoreland zone and in lawful existence as of March 13, 2010 but that does not meet the Section 11.1 minimum lot size requirements, subject to an acceptable soils test and an engineering design for a one-unit residential subsurface wastewater disposal system approved by the CEO of the Town of Harpswell and the following requirements:

a. Lot Size
   A lot with a minimum area of twenty thousand (20,000) square feet may be used for a single Workforce Housing Unit.

b. Road Setback
   If there is a predominate pattern of development in the immediate neighborhood with respect to the relationship of the principal structure to the road as determined by the CEO, the Workforce Housing Unit must be located on the lot so that it has a similar relationship to the road as other neighboring principal structures on the same side of
the road. If this requires the Workforce Housing Unit to be closer to the front lot line than the required front yard setback, the Workforce Housing Unit may encroach into the front setback area and no variance is required.

c. Sideyard Setback
If there is a predominate pattern of development in the immediate neighborhood with respect to the relationship of the principal structure to side yards as determined by the CEO, the Workforce Housing Unit must be located on the lot so that it has a similar relationship to the side yards as other neighboring principal structures on the same side of the road. If this requires the Workforce Housing Unit to be closer to the side yard lot line(s) than the required side yard setback, the Workforce Housing Unit may encroach into the side setback area(s) and no variance is required.

Prior to issuance of a building permit for a single Workforce Housing Unit, the Workforce Housing Lot shall be subjected to a Workforce Housing Covenant as set forth in Section 11.18.3.5 and that is recorded at the Cumberland County Registry of Deeds. The applicant shall provide a copy of the recorded instrument to the CEO.

11.18.2.2. New Subdivisions
Applications for new subdivisions may provide permanently restricted Workforce Housing Lots or Units by means of one or more of the following, as determined by the Planning Board:

a) Provide one (1) or more permanently restricted Workforce Housing Lots or Units within the project; or
b) Provide one (1) or more off-site permanently restricted Workforce Housing Lots or Units.

11.18.2.3. Notwithstanding any other provision of this ordinance to the contrary, two (2) or more Workforce Housing Lots or Units may share a subsurface wastewater disposal system, subject to review and approval of the CEO.

11.18.2.4. An applicant who is qualified to purchase a Workforce Housing Lot or Unit under this Section at the time of purchase of such Lot or Unit shall not be required to vacate such Lot or Unit due to a subsequent increase in income, provided that said applicant otherwise remains in compliance with this Section and any rules and regulations adopted by the Board of Selectmen for its management.

11.18.3. Standards for Development of Workforce Housing Subdivisions

11.18.3.1. Density Bonus Provisions. If a subdivision application provides Workforce Housing Lots or Units, the subdivision shall be eligible for a density bonus of one (1) additional market rate lot or unit for each moderate income Workforce Housing Lot or Unit and two (2) additional market rate lots or units for each low or very low income Workforce Housing Lot or Unit. Non-bonus lots shall meet all requirements of this ordinance and the Subdivision Ordinance. The reduced minimum lot size of twenty thousand (20,000) square feet, as allowed in Section 11.18.2.1a, shall apply only to the creation of Workforce Housing Lots or bonus lots.
in a new subdivision. No density bonus shall be applied where offsite Workforce Housing Lots or Units are provided.

The following chart illustrates calculations under this subsection:

<table>
<thead>
<tr>
<th>Proposed Units/Lots in subdivision</th>
<th># of Market Rate Units or Lots</th>
<th># of Moderate Income Workforce Housing Units/Lots</th>
<th># of Low/Very Low Income Workforce Housing Units/Lots</th>
<th>Bonus Market Rate Units/Lots Allowed</th>
<th>Total # of Units/Lots Possible</th>
</tr>
</thead>
<tbody>
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<td>2</td>
<td>12</td>
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</tbody>
</table>

For example, if developer/applicant proposes a three (3) lot subdivision and one (1) of those lots is affordable at the moderate income level, a bonus market rate lot would be allowed and then the total number of lots allowed would be four (4). If the developer/applicant proposes a five (5) lot subdivision and one (1) of those lots is affordable at the low income level, then the developer/applicant gains two (2) additional or “bonus” lots which may be market rate for a total of seven (7) lots. The same analysis and calculations apply to units.

11.18.3.2. Plan Notations and Recorded Documentation of Affordability. A note shall be added to all subdivision plans designating the lots or units that shall be permanently restricted Workforce Housing Lots or Units. The Workforce Housing Covenant shall be recorded in the Cumberland County Registry of Deeds concurrently with the recording of the approved plan. A copy of the recorded instrument shall be provided to the CEO within thirty (30) days after recording. Any deed or conveyance of title to a Workforce Housing Lot or Unit shall include reference to the recorded Workforce Housing Covenant imposed upon the initial approval of such Unit or Lot and failure to do so shall constitute a violation of this ordinance.

11.18.3.3. Location. Workforce Housing Lots and Units shall, to the greatest extent possible, be geographically dispersed throughout the subdivision or, if developed offsite, throughout the town.

11.18.3.4. Neighborhood Compatibility. The appearance and design of Workforce Housing Units on Workforce Housing Lots shall be compatible with the appearance and design of dwellings in the remainder of the subdivision. Exterior designs of the outside facades of both the market rate units and Workforce Housing Units shall be submitted to the Planning Board during the subdivision review process.

11.18.3.5. Workforce Housing Covenant. During the Planning Board review process and prior to final approval of a subdivision that includes Workforce Housing Lots or Units, the applicant shall submit to the Board of Selectmen, for approval on behalf of the Town, an executed Workforce
Housing Covenant agreement that preserves the long-term affordability of the Workforce Housing Lots or Units to very low, low and moderate income households. The agreement must be in a form acceptable to the town and include, at a minimum, provisions for the following:

a) Permanent affordability for low and moderate income buyers;
b) A formula for accruing limited equity recapture to the owner of a Workforce Housing Lot or Unit which includes approved physical improvements;
c) Enforcement provisions;
d) Administrative costs to the Town; and

e) Supervision of the agreement.

The Planning Board shall not grant final subdivision approval until the Board of Selectmen has approved the Workforce Housing Covenant agreement.

11.18.3.6. Development of Workforce Housing Lots.
For subdivisions for which the applicant chooses not to develop the Workforce Housing Unit or Workforce Housing Lot, the applicant may convey the Unit or Lot to a nonprofit corporation recognized under state and federal law as qualified to accept funding for the development of Workforce Housing. The nonprofit corporation shall complete the Unit or Lot pursuant to the provisions of this Section.

11.18.3.7. Off Site Option.
The Planning Board is authorized to allow acquisition and construction of Workforce Housing Lots or Units offsite. If the applicant chooses to utilize the offsite option for Workforce Housing Lots or Units, the applicant may join with others to provide the units through new offsite construction or renovation of existing offsite structures.

Any deed or conveyance of title to an offsite Workforce Housing Lot or Unit shall include reference to the recorded Workforce Housing Covenant imposed upon the initial approval of such Lot or Unit and failure to do so shall constitute a violation of this ordinance.

11.18.3.8. Administration of Workforce Housing.
The Town may contract with a qualified individual or entity for the administration of Workforce Housing Lots or Units for the screening of qualifying potential purchasers and the long term monitoring and administration of this Section. The costs for administration of the Workforce Housing provisions of this ordinance shall be paid for out of the Workforce Housing Fund.

11.18.4. Qualified Buyers.
Preference for buyers of Workforce Housing Lots or Units shall be given to Town residents, persons employed in the Town, persons with family members or relatives in Town, and former Town residents who wish to re-establish Town residency.

All swimming pools, as that term is defined in 22 M.R.S.A. § 1631(2), shall comply with the fence enclosure requirements set forth in 22 M.R.S.A. §§ 1631-1632, as may be amended from time to time. Failure to do so shall constitute a violation of this Ordinance.
11.20. Wheelchair Ramps and Other Accessibility Structures
Notwithstanding any other setback provision of this Ordinance to the contrary, the CEO may issue a permit to allow a wheelchair ramp or other structure necessary for access to or egress from a structure within a required setback provided that the following standards are met:

1. The wheelchair ramp or other structure necessary for access to or egress (“accessibility structure”) from a structure is only for the purpose of making a structure accessible to a person with a disability who resides in or regularly uses the structure;
2. The accessibility structure is designed to limit the encroachment into the required setback to the greatest practical extent;
3. The design, construction and location of the accessibility structure is appropriate to the context of the existing structure and neighborhood; and
4. All of the requirements of this Ordinance, with the exception of setback requirements, are met.

All permits issued pursuant to this Section shall contain a condition of approval shown on the face of the permit as follows: “This permit approval is limited to the duration of the disability or the time that the individual requiring the accessibility structure resides in or regularly uses the structure. The encroachment into the setback shall be removed when the individual requiring the accessibility structure no longer resides in or regularly uses the structure. The permit shall be renewed within five (5) years from its issuance.”

For the purposes of this Section, the term “structure necessary for access to or egress from a structure” is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the accessibility structure, and the term “disability” has the same meaning as a physical or mental disability under 5 M.R.S.A. § 4553-A, as may be amended from time to time.

SECTION 12. ADMINISTRATION

12.1. Administrative Bodies and Agents

12.1.1. Code Enforcement Officer (CEO). A CEO shall be appointed or reappointed annually by March 31.

12.1.2. Powers and Duties. The CEO shall enforce the provisions of the Town's land use ordinances and monitor all activities within the jurisdiction of the Town's land use ordinances. The CEO shall follow up all building permits to ascertain compliance with any conditions or restrictions imposed on the permittee by the CEO, Planning Board, Board of Appeals, or the Town's land use ordinances. The CEO shall also investigate all complaints of alleged violations of the Town's land use ordinances. He or she shall enforce the Town's land use ordinances, as defined in his or her job description, for which purpose he or she shall establish reasonable procedures.

The CEO shall have all of the duties, responsibilities, and powers set forth in the State statute or local ordinance, including but not limited to the power to issue "stop work" orders, notices of
violation of the Town's land use ordinances, and orders to cease violations. He or she shall also have the authority to revoke building permits as a result of violations of the Town's land use ordinances by the permit holder or his or her agents or contractors, noncompliance with conditions of building permits, or other sufficient cause under the Town's land use ordinances.

12.1.3. The CEO shall keep a complete written record of all essential transactions of his or her 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. Such records shall be available for inspection by the public.

On a biennial basis, a summary of this record for the shoreland districts shall be submitted to the Director of the Bureau of Land Quality Control within the Department of Environmental Protection.

12.1.4. The CEO shall maintain a list of permits granted by his or her office, the Board of Appeals and the Planning Board. Permits will remain on the list as long as they are active.

12.1.5. The CEO shall report to the Board of Selectmen any changes that may be needed in the Town's land use ordinances and prepare a file for review by the Selectmen and appropriate town boards and committees for future action.

12.2. Planning Board. A Planning Board is created in accordance with the provisions of State law.

12.2.1. Appointment.
  12.2.1.1. Appointment to the Board shall be made by the Selectmen as terms expire and/or as vacancies occur. Terms shall be for three (3) years.

  12.2.1.2. The Board shall consist of five (5) members and two (2) associate members.

  12.2.1.3. Associate members shall be appointed annually for one (1) year terms.

  12.2.1.4. Resignations from the Board shall be filled by appointments for the unexpired terms.

12.2.2. Organization and Rules.

  12.2.2.1. The Board shall elect a chairman and a secretary from its members and create and fill such offices as it may determine. The term of all offices shall be one (1) year, with eligibility for re-election.

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

  12.2.2.3. 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 sit for a member.
12.2.2.4. Any question as to whether a member shall be disqualified from voting shall be decided by a majority vote of the members except the member who is being challenged.

12.2.2.5. The Chairman shall call at least eight (8) regular meetings of the Board each year.

12.2.2.6. Four (4) persons shall be a quorum of the Board.

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

12.2.2.8. The Selectmen may appoint a replacement for any member with two (2) or more consecutive unexcused absences from regularly scheduled meetings.

12.2.3. Duties and Powers.

12.2.3.1. The Board shall perform such duties and exercise such powers as are provided by Town Ordinances and State Law.

12.2.3.2. Notification to Abutters. Owners of properties, any part of which is located within two hundred fifty (250) feet of the nearest boundary of any property on which a development requiring Planning Board approval is proposed shall be notified by the Municipal Office, at the applicant's expense, by first class mail, of the date on which the application will be considered by the Planning Board. Failure of any property owner to receive the notice sent as required under this subsection shall not necessitate another public meeting or invalidate any action taken by the Planning Board.

12.2.3.3. Technical Review Fee. In addition to the application fee, every applicant to the Planning Board may also be required by the Planning Board to pay a technical review fee to defray the Town’s legal and technical costs of the application review. This fee must be paid to the Town and shall be deposited in an individual trust account, which is separate and distinct from all other Planning Board and Town accounts. When a technical review fee is required, the application will be considered incomplete until evidence of payment of this fee is submitted to the Planning Board. If the initial fee proves to be insufficient to meet the Town’s legal and technical costs of reviewing the application, the Planning Board may assess an additional fee(s) to cover such legal and technical costs.

The technical review fee may be used by the Planning Board only to pay reasonable costs incurred by the Board, at its discretion, which relate directly to the review of the application pursuant to the review criteria. Such services may include, but need not be limited to, consulting, engineering or other professional fees, attorney fees, recording fees, and appraisal fees. The Town shall provide the applicant, upon written request, with an accounting of his or her account and shall refund all of the remaining monies, including accrued interest, in the account after the payment by the Town of all costs and services related to the review. Such
payment of remaining monies shall be made no later than sixty (60) days after the approval of the application, denial of the application, or approval with conditions of the application. Such refund shall be accompanied by a final accounting of expenditures from the fund. The monies in such fund shall not be used by the Board for any enforcement purposes.

12.3. **Board of Appeals.** A Board of Appeals is created in accordance with the provisions of State law.

12.3.1. **Powers and Duties.** The Board of Appeals has the following powers and duties:

12.3.1.1. **Administrative Appeals.** To hear and decide appeals, on an appellate basis, where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Planning Board or the Assessors or their designee in the administration of the Town's land use ordinances; and to hear and decide administrative appeals, on a *de novo* basis, where it is alleged that there is an error in any order, requirement, decision or determination made by the CEO or Local Plumbing Inspector in the administration or enforcement of the Town’s land use ordinances, the Maine Subsurface Waste Water Disposal Rules, Internal Plumbing Code, Minimum Lot Size Law and Regulations, and Rules for Conversion of Seasonal Dwelling Units into Year-Round Residences in the Shoreland Zone; provided, however, that the CEO or Local Plumbing Inspector’s exercise of his or her discretionary judgment whether to pursue enforcement activity under the Town’s land use ordinances, the Maine Subsurface Waste Water Disposal Rules, Internal Plumbing Code, Minimum Lot Size Law and Regulations, and Rules for Conversion of Seasonal Dwelling Units into Year-Round Residences in the Shoreland Zone is not subject to appeal.

*Citizen's Note: Some decisions made by the Planning Board in administering the Subdivision Ordinance are not subject to appeal. See Section 14 of the Subdivision Ordinance.*

12.3.1.2. **Variance Requests.** To authorize variances upon request or otherwise, on a *de novo* basis, within the limitations set forth in the Town's land use ordinances.

12.3.1.3. **Boundary Line Determinations.** To hear and decide disputes, on a *de novo* basis, regarding the location of the boundary line for the Shoreland Zoning District.

12.3.1.4. **Notification to Abutters.** Owners of properties, any part of which is located within two hundred fifty (250) feet of the nearest boundary of any property subject to an administrative appeal, variance request, or dispute about the Shoreland Zoning District boundary line shall be notified by the Municipal Office, at the applicant's expense, by first class mail, of the date on which the appeal, request, or dispute will be heard by the Board of Appeals. Failure of any property owner to receive the notice sent as required under this subsection shall not necessitate another public meeting or invalidate any action taken by the Board of Appeals.

12.4. **Definitions.** For purposes of this Ordinance, certain terms or words used herein shall be defined as set forth in the Definitions Addendum attached hereto and made a part hereof.
SECTION 13. PERMITS, APPROVALS AND CERTIFICATES OF COMPLIANCE REQUIRED

13.1. Permits or Approvals. After the effective date(s) of the applicable land use ordinance and amendments thereto, no person shall, without first obtaining a permit or approval, engage in any activity or use of land or structure requiring a permit or approval under the applicable Town land use ordinance governing the area in which the activity or land use would occur. Permits shall be posted on site in a manner that is readily visible within two (2) working days of issuance. Permits or approvals are required as noted in Table 1.

13.2. Certificates of Compliance. Prior to occupancy or use of any structure or land use requiring a permit or approval, the owner shall obtain a certificate of compliance from the CEO. No occupancy or use of a structure, development, or land use may occur without a certificate of compliance, unless specifically allowed by the conditions of an approval or permit. The CEO shall not issue a certificate of compliance until he or she has determined that the structure, development or land use has been completed in accordance with all of the Town’s land use ordinances and with any conditions of permits or approvals imposed under those ordinances.

13.2.1. Temporary Certificates of Compliance. Residing in a basement or foundation before the structure has been completed shall be permitted for a period of three (3) years from the date of issuance of a building permit subject to issuance of a one (1) year temporary certificate of compliance, renewable annually, provided the following conditions are met:

a. reasonable progress, as determined by the CEO, is being made toward completion of the structure as permitted;

b. nuisance conditions do not exist;

c. a valid plumbing permit has been issued and all conditions of that permit are being met;

d. dimensional requirements of the applicable ordinance are being met; and

e. all other applicable requirements of the Town’s ordinances are being met.
### 13.3. TABLE 1. LAND USES AND ACTIVITIES

<table>
<thead>
<tr>
<th>Land Uses</th>
<th>Interior</th>
<th>Shoreland Districts</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>INT</td>
<td>RP</td>
</tr>
<tr>
<td>1. Non-intensive recreational uses not requiring structures such as hunting, fishing, and hiking</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>2. Motorized vehicular traffic on existing roads and trails</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>3. Forest management activities except for timber harvesting</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>4. *Timber Harvesting</td>
<td>Yes</td>
<td>NA</td>
</tr>
<tr>
<td>5. *Clearing of vegetation for approved construction and other allowed uses</td>
<td>Yes</td>
<td>CEO</td>
</tr>
<tr>
<td>6. Fire prevention activities</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>7. Wildlife management practices</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>8. Soil and water conservation practices</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>9. Mineral exploration</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>10. Mineral extraction including sand and gravel extraction</td>
<td>PB</td>
<td>No</td>
</tr>
<tr>
<td>11. Surveying and resource analysis</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>12. Emergency operations</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>13. *Agriculture</td>
<td>Yes</td>
<td>PB</td>
</tr>
<tr>
<td>14. Aquaculture</td>
<td>PB</td>
<td>PB</td>
</tr>
<tr>
<td>15. Principal structures and uses</td>
<td>CEO</td>
<td>PB&lt;sup&gt;10&lt;/sup&gt;</td>
</tr>
<tr>
<td>15.1 One and two–unit residential uses including driveways</td>
<td>CEO</td>
<td>No</td>
</tr>
<tr>
<td>15.2 Multi-unit residential</td>
<td>PB</td>
<td>No</td>
</tr>
<tr>
<td>15.3 *Commercial</td>
<td>PB</td>
<td>No&lt;sup&gt;13&lt;/sup&gt;</td>
</tr>
<tr>
<td>15.4 *Industrial</td>
<td>PB</td>
<td>No</td>
</tr>
<tr>
<td>15.5 *Governmental and Institutional</td>
<td>PB</td>
<td>No&lt;sup&gt;8&lt;/sup&gt;</td>
</tr>
<tr>
<td>15.6 Small nonresidential facilities for marine, scientific or nature related purposes</td>
<td>PB</td>
<td>No</td>
</tr>
<tr>
<td>Land Uses</td>
<td>Interior</td>
<td>Shoreland Districts</td>
</tr>
<tr>
<td>----------------------------------------</td>
<td>----------</td>
<td>---------------------</td>
</tr>
<tr>
<td></td>
<td>INT</td>
<td>RP</td>
</tr>
<tr>
<td>15.7 Nonagricultural Fertilizer Use</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15.7.1 Chemical fertilizer, sludge, and non-composted manure</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>15.7.2 Organic fertilizer and composted manure</td>
<td>Yes&lt;sup&gt;21&lt;/sup&gt;</td>
<td>Yes&lt;sup&gt;21&lt;/sup&gt;</td>
</tr>
<tr>
<td>15.8 Community Shoreland Access</td>
<td>PB&lt;sup&gt;20&lt;/sup&gt;</td>
<td>CEO</td>
</tr>
<tr>
<td>16. Accessory structures and uses</td>
<td>CEO&lt;sup&gt;11&lt;/sup&gt;</td>
<td>PB&lt;sup&gt;11&lt;/sup&gt;</td>
</tr>
<tr>
<td>17. Structural repair</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>17.1 Structural alteration/replacement: residential</td>
<td>CEO</td>
<td>CEO</td>
</tr>
<tr>
<td>17.2 Structural alteration/replacement: nonresidential</td>
<td>CEO/ PB</td>
<td>CEO/ PB</td>
</tr>
<tr>
<td>18.1 *Noncommercial piers, docks, wharves, bridges and other structures and uses extending over or below the HAT, maximum high water line or wetland</td>
<td>Yes</td>
<td>PB&lt;sup&gt;14&lt;/sup&gt;</td>
</tr>
<tr>
<td>18.2 *Commercial piers, docks, wharves, bridges and other structures and uses extending over or below the HAT, maximum high water line or wetland</td>
<td>Yes</td>
<td>CEO/ PB&lt;sup&gt;14&lt;/sup&gt;</td>
</tr>
<tr>
<td>18.3 Community piers, docks, and wharves</td>
<td>NA</td>
<td>PB</td>
</tr>
<tr>
<td>19. Conversions of seasonal residences to year round residences</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>20. *Home occupations</td>
<td>Yes&lt;sup&gt;8&lt;/sup&gt;</td>
<td>PB&lt;sup&gt;8&lt;/sup&gt;</td>
</tr>
<tr>
<td>21. Sewage disposal systems</td>
<td>LPI</td>
<td>PB&lt;sup&gt;19&lt;/sup&gt;/ LPI</td>
</tr>
<tr>
<td>22. *Essential services</td>
<td>Yes</td>
<td>PB</td>
</tr>
<tr>
<td>23. Service drop for allowed uses</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>24. Public and private recreational areas involving minimal development, but no building</td>
<td>Yes&lt;sup&gt;12&lt;/sup&gt;</td>
<td>PB</td>
</tr>
<tr>
<td>25. *Individual private campsites</td>
<td>Yes</td>
<td>CEO</td>
</tr>
<tr>
<td>26. *Campgrounds</td>
<td>PB</td>
<td>No&lt;sup&gt;5&lt;/sup&gt;</td>
</tr>
<tr>
<td>27. *Road construction</td>
<td>Yes&lt;sup&gt;12&lt;/sup&gt;</td>
<td>No&lt;sup&gt;6&lt;/sup&gt;</td>
</tr>
<tr>
<td>28. *Parking areas - residential</td>
<td>Yes</td>
<td>CEO/ PB</td>
</tr>
<tr>
<td>29. *Parking areas – nonresidential</td>
<td>PB</td>
<td>No&lt;sup&gt;8&lt;/sup&gt;</td>
</tr>
<tr>
<td>30. *Marinas</td>
<td>PB</td>
<td>No</td>
</tr>
<tr>
<td>31. Boat Repair Facility</td>
<td>PB</td>
<td>No</td>
</tr>
<tr>
<td>32. Filling and earth moving &lt; 50 cubic yards</td>
<td>Yes</td>
<td>CEO</td>
</tr>
<tr>
<td>33. Filling and earth moving &gt; 50 cubic yards but less than 1,000 cubic yards&lt;sup&gt;12&lt;/sup&gt;</td>
<td>Yes</td>
<td>PB</td>
</tr>
</tbody>
</table>
### Table 1. Land Uses and Activities (Cont.)

<table>
<thead>
<tr>
<th>Land Uses</th>
<th>Interior</th>
<th>Shoreland Districts</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>INT</td>
<td>RP</td>
</tr>
<tr>
<td>34. Filling and earthmoving &gt; 1,000 cubic yards ¹²</td>
<td>PB</td>
<td>PB</td>
</tr>
<tr>
<td>35. *Signs</td>
<td>CEO</td>
<td>CEO</td>
</tr>
<tr>
<td>36. Uses similar to allowed uses</td>
<td>CEO</td>
<td>CEO</td>
</tr>
<tr>
<td>37. Uses similar to uses requiring a CEO permit</td>
<td>CEO</td>
<td>CEO</td>
</tr>
<tr>
<td>38. Uses similar to uses requiring a PB permit</td>
<td>PB</td>
<td>PB</td>
</tr>
<tr>
<td>39. Projects which use more than 1000 gallons of water/day</td>
<td>CEO</td>
<td>CEO</td>
</tr>
<tr>
<td>40. Land Management Roads</td>
<td>Yes</td>
<td>PB</td>
</tr>
<tr>
<td>41. Mobile Food Handlers</td>
<td>BOS</td>
<td>No</td>
</tr>
</tbody>
</table>

**Yes** = Allowed (no permit required but the use must comply with all applicable land use standards)  
**No** = Prohibited  
**BOS** = License or other approval issued by the Board of Selectmen may be required under the Town’s Mobile Food Handlers Ordinance or Mitchell Field use policies; site plan review and approval by the Planning Board may be required if a seating area for customers is provided.  
**PB** = Requires permit issued by the Planning Board  
**HAT** = Highest Annual Tide  

**LPI** = Plumbing permit required  
**CEO** = Permit required from Code Enforcement Officer  
**MHW** = Maximum High Water  
**INT** = Areas not in the Shoreland Zone  
**RP** = Resource Protection Zone  
**SR** = Shoreland Residential  
**SB** = Shoreland Business  
**CFI** = Commercial Fisheries I  
**CFII** = Commercial Fisheries II  

**Citizen’s Note:** If you are uncertain about the activity you wish to conduct, that is not listed above, you are advised to contact the Code Enforcement Office for further details.

### FOOTNOTES: Land Use Table

* For further information on the * uses in land use chart, see Section 15 of the Shoreland Zoning Ordinance.

1. No - except grandfathered properties.

2. Marine related services only. Retail stores limited to nine hundred (900) or less square feet in size.

3. No except limited Commercial Fishing activities.

4. Functionally water-dependent and accessory to Commercial Fishing uses only.
5. Except when area is zoned for resource protection due to flood plain criteria in which case a permit is required from the Planning Board.

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 Planning Board.

7. Primarily commercial fishing related use.

8. Home occupations that provide public restrooms and showers or serve food to the public require a CEO permit. All home occupations are subject to the provisions of Section 15.20 of the Shoreland Zoning Ordinance regardless of whether they are located within the Shoreland Zone.

9. Additions or expansions to existing Town Office Complex may be allowed with Planning Board approval.

10. Only as provided in Section 13.1.1 of the Shoreland Zoning Ordinance.

11. When a structure is accessory to both residential and nonresidential uses, the provisions of the more restrictive ordinance shall apply.

12. May require site plan review approval. See Town of Harpswell Site Plan Review.

13. Except for other allowed commercial uses listed in the Table that are allowed in the respective district.

14. Excluding bridges and other crossings not involving earthwork, in which case no permit is required.

15. Hunting is prohibited on all property at Mitchell Field that is owned by the Town of Harpswell.

16. At least forty-five percent (45%) of the gross leasable lot area within the district must be utilized for aquaculture, marinas, boat repair facilities, and/or functionally water-dependent uses as defined in the Definitions Addendum. Not more than fifteen percent (15%) of the gross leasable lot area in the district may be used for commercial or industrial uses that are not functionally water-dependent uses, aquaculture, marinas, and/or boat repair facilities nor other marine-related businesses as defined in the Definitions Addendum provided that these uses may not be located within two hundred fifty (250) feet of the HAT of the coastal wetland. Marine-related business uses are allowed within the district provided that the limitations set forth above are met. The use of the pier and the causeway leading to the pier is limited to activities involving public access and recreation and activities related to and in support of functionally water-dependent uses and marine related businesses that are located within the Mitchell Field.
Marine Business District provided that the private use of these facilities does not unduly restrict reasonable public access to and use of the pier.

17. The limitation on the size of nonresidential facilities for marine, scientific, or nature related purposes shall not apply in the Mitchell Field Business Districts if the Planning Board finds that the scale and location of the facility are consistent with the objectives of shoreland zoning and the Mitchell Field Master Plan.

18. Permit applications for noncommercial, private piers, docks or wharves with a maximum width of six (6) feet as measured parallel to the shoreline and which do not extend below the low water line shall be reviewed and issued by the CEO. Noncommercial, private piers greater than six (6) feet wide as measured parallel to the shoreline or which extend below the low water line are prohibited.

19. Permit applications for commercial piers, docks or wharves with a maximum width of twelve (12) feet as measured parallel to the shoreline and which limit the length of the structure to the minimal amount necessary to provide access to the boats intended to use the facility shall be reviewed and issued by the CEO. Permits for commercial piers greater than twelve (12) feet wide as measured parallel to the shoreline or which exceed the minimum length necessary to provide access to the boats intended to use the facility shall be reviewed and issued by the Planning Board.

20. Only as provided in Section 13.1.2. of the Shoreland Zoning Ordinance.

21. Organic fertilizer and composted manure may not be applied within twenty-five (25) feet of the maximum high water line of a great pond, stream, tributary stream, HAT of the coastal wetland or the upland edge of a freshwater wetland as outlined in Section 15.21.1 of the Shoreland Zoning Ordinance.

**Citizen's Note:** Land use activity adjacent to protected natural resources requires a permit from the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. § 480-C, as may be amended from time to time. Please see CEO for more information.

**13.3. Permit and Approval Application**

13.3.1. Every applicant for a permit or approval shall submit a written application including a scaled site plan on a form provided by the CEO to the appropriate administering body or agent. Application forms shall account for all aspects to which the Town's land use ordinances apply.

13.3.2. All applications shall be signed by the owner or owners of the property, certifying that the information in the application is complete and correct. If the person signing the application is not the owner of the property, then that person shall submit a letter of authorization from the owner.
13.3.3. All applications shall be dated and the CEO shall note upon each application the date and time of its receipt.

13.3.4. A completed application for a plumbing permit, including the site evaluation approved by the Plumbing Inspector, shall be submitted whenever the nature of a proposed structure would require the installation of a subsurface sewage disposal system. Whenever the nature of the proposed use includes any construction, installation, or alteration of plumbing facilities, the applicant shall provide one or more of the following, as appropriate, documenting that the structure or use will be served by an adequate wastewater disposal system:

- A valid plumbing permit or completed application for a plumbing permit, including the site evaluation approved by the plumbing inspector.

- A certificate of approval indicating the existing system was installed after July 1974 and was inspected and approved by the plumbing inspector.

- Documentation from the DEP showing that a licensed overboard discharge system exists in accordance with 38 M.R.S.A. § 413 and § 414, as may be amended from time to time.

- Written documentation, acceptable to the plumbing inspector that an adequate wastewater disposal system exists for the property.

The plumbing inspector may require that systems installed prior to 1974 be inspected and documented if the applicant cannot provide evidence that an adequate system exists. In lieu of this inspection, a replacement system may be designed for future installation.

13.4. Procedure for Administering Permits

13.4.1. With the exception of applications for subdivision and site plan review approvals and applications for which the Planning Board is provided the opportunity to take jurisdiction, the Planning Board or CEO, as appropriate, shall examine all written applications for permits or other actions under the Town's land use ordinances and within thirty-five (35) days from the date of receipt of such written application, 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.

13.4.2. With the exception of applications for subdivision and site plan review approvals and applications for which the Planning Board is provided the opportunity to take jurisdiction, the Planning Board may or CEO shall, as appropriate, within the thirty-five (35) day time frame, visit the site for which the permit is sought.

13.4.3. The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purpose and provisions of the Town's land use ordinances and any State or Federal law, regulation or rule.
13.4.4. With the exception of applications for subdivision and site plan review approvals and applications for which the Planning Board is provided the opportunity to take jurisdiction, the Planning Board or CEO, as appropriate, shall approve, approve with conditions, or deny all permit applications in writing within thirty-five (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 thirty-five (35) days of the public hearing if one is held, or within thirty-five (35) days of the next regularly scheduled meeting at which the application is considered.

*Citizen’s Note: See Section 13.4.7 if Planning Board approval is required for activity in the Shoreland Zone.*

13.4.5. Permits shall be approved and approvals given when the proposed use or structure is found to be in conformance with the purposes and provisions of the applicable ordinance.

13.4.6. No permit or 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 any State law, or Federal law or regulation or rule, which the Town is responsible for enforcing.

13.4.7. The Planning Board shall approve, or approve with conditions, a request for a permit in the Shoreland Zone if the Board finds that the proposed use:

13.4.7.1. Will maintain safe and healthful conditions;

13.4.7.2. Will not result in water pollution, erosion, or sedimentation to surface waters;

13.4.7.3. Will adequately provide for the disposal of all wastewater;

13.4.7.4. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;

13.4.7.5. Will conserve shore cover and points of access to inland and coastal waters;

13.4.7.6. Will protect archaeological and historic resources as identified in the Town’s Comprehensive Plan, or by the Maine Historic Preservation Commission or the National Park Service;

13.4.7.7. Will not adversely affect existing commercial fishing or maritime activities in a Commercial Fisheries I or II District;

13.4.7.8. Will avoid problems associated with flood plains development and use; and

13.4.7.9. Is in conformance with the provisions of Section 15, Land Use Standards of the Shoreland Zoning Ordinance.
If a permit or approval 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 any State or federal law or regulation or rule which the municipality is responsible for enforcing.

13.5. Fee and Time Limits

13.5.1. Unless otherwise provided by law, permits and approvals shall expire if substantial start of construction or other permitted or approved activity has not commenced within twelve (12) months from the date on which the permit or approval was granted. An extension of time to commence shall be granted upon application to and approval by the CEO, if reasonable need can be shown. A permit or approval is transferable unless otherwise specified.

13.5.2. Unless otherwise provided by local law, when a substantial start of construction, as defined in the Definitions Addendum, has been made in accordance with 13.5.1 and the Certificate of Compliance has not been issued by the Code Enforcement Office within five (5) years from the date on which the permit or approval was granted, the permit or approval shall expire. An extension of time to obtain a Certificate of Compliance may be granted upon applications to and approval by Board of Appeals, if reasonable need can be shown due to exigent circumstances. Exigent circumstances would include severe family, medical, or financial problems which prevented substantial completion of construction within the required five (5) year timeframe, as determined by the Board of Appeals.

13.5.3. A nonrefundable fee, in such amount as may be established by the Board of Selectmen from time to time, shall be charged for applications, permits and approvals required under the Town’s land use ordinances, and a higher fee shall be charged for permit and approval applications that are filed by the applicant after the commencement of the activity for which the permit or approval is required.

13.5.4. When a permit or approval has expired, a new permit or approval must be obtained in order for construction to continue. Further construction must meet the requirements of the Town’s land use ordinances in effect at the time the new permit or approval is sought.

13.5.5. The provisions of Sections 13.5.2 and 13.5.4. of this Ordinance apply only to permits and approvals issued on or after April 1, 1998

13.5.6. Failure of the Planning Board to act upon a request for action or upon an application for a permit or approval, or of the CEO to act upon a request for action or upon an application for a building permit, within thirty-five (35) days of the date of receipt of a complete application shall constitute denial of that request or application, unless the applicable ordinance provides otherwise.
13.6. Violation, Enforcement, Penalties, and Legal Actions

13.6.1. Any violation of the Town's land use ordinances shall be deemed to be a nuisance.

13.6.2. If the CEO finds that provisions of the Town's land use ordinances are being violated, he or she shall notify personally or in writing, if necessary by certified mail return receipt requested, the person responsible for such violation indicating the nature of the violation, and ordering the action necessary to correct it. He or she shall order the discontinuance of illegal use of land, structures, or work being done, removal of illegal structures, or of additions, alterations, or structural changes thereto; discontinuance of any illegal work being done or nuisance conditions; or shall take any other action authorized by this Article to ensure compliance with or to prevent violation of the provisions of the Town's land use ordinances. A copy of such notice shall be submitted to the Board of Selectmen and shall be maintained as a permanent record.

13.6.3. Any person, including but not limited to a landowner, a landowner's agent, or contractor who orders or conducts any activity in violation of the Town's land use ordinances shall be penalized in accordance with 30-A, M.R.S.A. § 4452, as may be amended from time to time.

Citizen's Note: Current penalties include fines of not less than one hundred ($100) dollars nor more than twenty-five hundred ($2,500) dollars. Fines may be assessed for each day the violation occurs.

13.6.3.1. In addition to penalties provided herein, the Town may bring an action in the Superior Court or District Court to enjoin violators of the Town's land use ordinances, for collection of penalties, and for such other relief as may be provided by law.

13.6.3.2. Each day in which a violation is proved to exist shall constitute a separate offense under this Section.

13.6.3.3. In addition to the penalties provided above, any violation of Section 15.15.2. of the Shoreland Zoning Ordinance regarding clearing of vegetation within the seventy-five (75) foot shoreland setback must be remedied by replanting such that the standards of Section 15.15.2.2. of the Shoreland Zoning Ordinance for a well distributed stand of trees and other vegetation are met, unless the Selectmen find that the violation is minor, in which case they may determine such lesser penalty as law allows.

13.6.4. When notification and penalties for actions in violation of the Town's land use ordinances do not result in the correction or abatement of the violation or nuisance condition, the CEO shall advise the Board of Selectmen, who may institute any and all actions and proceedings either legal or equitable, to correct the violation, including seeking injunctions of violations, that may be appropriate or necessary for the enforcement of the provisions of the Town's land use ordinances in the name of the Town. The Board of Selectmen is authorized to
enter into administrative consent agreements for the purpose of eliminating violations of the Town's land use ordinances 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 Town 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.

SECTION 14. VARIANCES AND APPEALS


Variances may be permitted only under the following conditions:

14.1.1. Variances may be granted only from dimensional requirements including but not limited to, lot width, structure height, and setback requirements.

14.1.2. Variances shall not be granted for establishment of any uses otherwise prohibited by the applicable ordinance.

14.1.3. A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the Board of Appeals or its designee 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.

14.1.4. The Board shall not grant a variance unless it finds that:

14.1.4.1. The proposed structure or use would meet the requirements of the applicable Town land use ordinance except for the specific provision(s) which has created the nonconformity and from which relief is sought; and

14.1.4.2. Except as provided in subsections 14.1.4.3 and 14.1.4.4, and 14.1.4.5, the Board may grant a variance only if strict application of the ordinance to the applicant and the applicant’s property would cause undue hardship. The term “undue hardship” as used in this subsection means:

1. That the land in question cannot yield a reasonable return unless a 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 in the neighborhood;
3. That the granting of a variance will not alter the essential character of the locality; and

4. That the hardship is not the result of action taken by the applicant or a prior owner.

14.1.4.3. Disability Variance. The Board may grant a variance to an owner of a 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. For the purposes of this subsection, a disability has the same meaning as a physical or mental disability under 5 M.R.S.A., § 4553, as may be amended from time to time, and the term “structures necessary for access to or egress from the dwelling” is defined to include railing, wall, or roof systems necessary for the safety or effectiveness of the structure.

14.1.4.4. Setback Variance for One-Unit Residential Uses. The Board may grant a setback variance for a one-unit residential use. The Board may consider a variance from a setback requirement only when strict application of the zoning ordinance to the applicant and the applicant's property would cause undue hardship. The term "undue hardship" in the subsection means:

1. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
2. The granting of a variance will not alter the essential character of the locality;
3. The hardship is not the result of action taken by the applicant or a prior owner;
4. The granting of the variance will not substantially reduce or impair the use of an abutting property; and:
5. That the granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

A variance granted under this subsection is strictly limited to permitting a variance from a setback requirement for a one-unit residential use that is the primary year-round residence of the applicant. A variance under this subsection may not exceed twenty percent (20%) of a setback requirement and may not be granted if the variance would cause the area of the dwelling to exceed the maximum permissible lot coverage. The Board may allow for a variance under this subsection to exceed twenty percent (20%) of the setback requirement, except for minimum setbacks from a water body, or the upland edge of a wetland, or a tributary stream within the Shoreland Zone, if the applicant has obtained the written consent of an affected abutting land owner.
14.1.4.5. Practical Difficulty Variance. The Board may grant a variance from the dimensional standards of a zoning ordinance when strict application of the ordinance to the applicant and the applicant's property would cause a practical difficulty and when the following conditions exist:

1. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;
2. The granting of the variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;
3. The practical difficulty is not the result of action taken by the petitioner or a prior owner;
4. No other feasible alternative to a variance is available to the petitioner;
5. The granting of a variance will not unreasonably or adversely affect the natural environment; and
6. The property is not located in whole or in part within the Shoreland Zone.

As used in this subsection, "dimensional standards" means and is limited to ordinance provisions relating to lot area, lot coverage, frontage, and setback requirements.

As used in this subsection, "practical difficulty" means that the strict application of the ordinance to the property precludes the ability of the applicant to pursue a use permitted in the zoning district or area in which the property is located and results in significant economic injury to the applicant.

14.1.5. Variance Recorded. If the Board of Appeals grants a variance under this section, a certificate indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title and indicating the fact that a variance, including any conditions on the variance, has been granted and the date of the granting, shall be prepared in recordable form. This certificate must be recorded in the local Registry of Deeds within ninety (90) days of the final written approval of the variance or the variance is void. The variance is not valid until recorded as provided in this subsection. For the purpose of this subsection, the date of the final written approval shall be the date stated on the written approval.

14.1.6. Interpretation of Ordinance Requirements. 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.
14.1.7. A copy of all variances granted by the Board of Appeals in the Shoreland Zone shall be submitted to the Department of Environmental Protection within fourteen (14) days of the decision.

14.2. Appeals

14.2.1. Administrative Appeal. An administrative appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the CEO, the Planning Board, or the Assessors or their designee unless otherwise noted in the appropriate land use ordinance or any decision of the Local Plumbing Inspector in the administration of the Maine Subsurface Waste Water Disposal Rules, Internal Plumbing Code, Minimum Lot Size Law and Regulations, and Rules for Conversion of Seasonal Dwelling Units into Year-Round Residences in the Shoreland Zone. Such appeal shall be taken within forty (40) days of the date of the decision appealed from, and not otherwise, except that the Board, upon showing of good cause, may waive the forty (40) day requirement.

14.2.2. 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 the decision of the Planning Board, CEO or Local Plumbing Inspector being appealed from, the specific provisions of the applicable ordinance, to which the decision is alleged to be in error, and what relief is requested.

2. A sketch drawn to scale showing lot lines, location of existing structures and other physical features of the lot pertinent to the relief sought.

14.2.3. Upon being notified of an administrative appeal, the CEO, Local Plumbing Inspector or Planning Board, as appropriate, shall transmit to the Board of Appeals all the papers constituting the record of the decision appealed from.

14.2.4. The Board of Appeals shall hold a public hearing on the appeal within thirty-five (35) days of its receipt of an appeal request.

14.3. Decision by Board of Appeals

14.3.1. A majority of the Board shall constitute a quorum for the purpose of deciding an appeal, request, or dispute. A member who abstains shall not be counted in determining whether a quorum exists.

14.3.2. 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 CEO, Local Plumbing Inspector or Planning Board, or to decide in favor of the applicant on any matter on which it is required to decide, or to grant any variance, or to settle a dispute about the Shoreland Zoning District boundary. When acting in an appellate capacity, the Board
of Appeals may reverse the decision of the Planning Board only when there is an error in the Planning Board’s interpretation or application of specific provisions of the ordinance. When acting in a de novo capacity, the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of the evidence.

14.3.3. The person filing the variance application, administrative appeal or dispute about the Shoreland Zoning District boundary line shall have the burden of proof.

14.3.4. The Board shall decide all appeals, requests, or disputes within thirty-five (35) days after the close of the hearing, and shall issue a written decision on all appeals.

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

14.4. Appeal to Superior Court

Any aggrieved party who participated in the proceedings before the Board of Appeals may take an appeal to Superior Court as set forth in 30-A M.R.S.A. § 2691(3), as may be amended from time to time.

14.5. Reconsideration

The Board of Appeals may reconsider any decision as set forth in 30-A M.R.S.A. § 2691(3), as may be amended from time to time. The Board may conduct additional hearings and receive additional evidence and testimony.
TOWN OF HARPSWELL

MOBILE FOOD HANDLERS ORDINANCE

Adopted June 12, 2012
TOWN OF HARPSWELL MOBILE FOOD HANDLERS ORDINANCE

Section 1. Title.
This Ordinance shall be known and may be cited as the “Town of Harpswell Mobile Food Handlers Ordinance.”

Section 2. Purpose.
The purpose of this Ordinance is to regulate those establishments that operate as mobile food handlers in the Town of Harpswell. The regulations are essential to ensure that these establishments are selling food products in compliance with the Maine Food Code and are operating in appropriate locations within the Town.

Section 3. Authority.
This Ordinance is adopted pursuant to 30-A M.R.S.A. § 3001, as may be amended from time to time.

Section 4. Definitions.
As used in this Ordinance, the following terms shall have the meanings ascribed to them in this Section.

Food Code shall mean the State of Maine Food Code 2001 adopted by the Maine Department of Human Services and the Maine Department of Agriculture, Food and Rural Resources, as may be amended from time to time.

Food products means a raw, cooked or processed edible substance, ice, non-alcoholic beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

Menu board shall mean a surface on which food products for sale are listed.

Mobile food handler shall mean any person selling, or offering for sale, food products within the Town from a mobile unit, and where delivery is made at the time of sale.

Mobile unit shall mean a mobile, temporary or non-permanent vending unit that is capable of being moved from place to place.

Nonprofit corporation or organization shall mean a corporation or organization whose income or profit generated thereby is not distributable to its members, directors or officers.

Operator shall mean the person operating as a mobile food handler.
Person shall mean any individual, partnership, limited liability company, corporation, governmental entity, other legal entity, association, or public or private organization of any character.

Town shall mean the Town of Harpswell.

Section 5. License Required.
A person shall not operate as a mobile food handler in the Town without first obtaining a license to do so from the Board of Selectmen; provided, however, that this Ordinance does not apply to the following: (a) nonprofit corporations or organizations that are exempt from obtaining a State of Maine eating establishment license under 12 M.R.S.A. § 2501, as may be amended from time to time, and that do not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of highways or public roads as determined by the Code Enforcement Officer; (b) any person who holds a valid site plan approval issued by the Planning Board; and (c) mobile food vendors located at Mitchell Field, who shall be reviewed and approved under Mitchell Field use policies instead of this Ordinance. A license may only be granted upon a showing by the applicant of compliance with all requirements of this Ordinance.

Section 6. Application Process.
(a) Authorized Applicants and Required Information. Applications for licenses under this Ordinance must be made by the person who will operate as a mobile food handler. The applicant shall file with the Town Planner an application in writing on a form to be furnished by the Town Planner, which shall include the following information:
(i) Name of the applicant and mobile unit owner, including the names of the principals of any limited liability company or corporate applicant.
(ii) Address – local and legal address for receipt of notices. In the event of a change of either address prior to action on the application, the applicant shall notify the Town Planner so that the application may be revised.
(iii) Phone numbers – home and cell phone numbers as well as emergency phone numbers. In the event of a change of any phone number prior to action on the application, the applicant shall notify the Town Planner so that the application may be revised.
(iv) Name, address and telephone numbers (home, cell and emergency) of the operator, if operator is different from the applicant.
(v) A brief description of the food products to be sold.
(vi) A statement as to whether the applicant has been convicted of any crime, misdemeanor, or violation of any municipal ordinance, the nature of the offense, the punishment or penalty assessed therefore, and the date of occurrence.
(vii) Hours and dates of proposed mobile food handler operations.
(viii) A sketch or photograph of the mobile unit with its measurements and all associated parts listed.
(ix) A sketch plan showing the proposed location(s) of operation of the mobile unit and parking spaces as required herein, including the relationship of the same to all site features in the immediate area.
(x) A copy of the written agreement or other instrument under which the land and parking space(s) for the mobile unit and customers will be available to the applicant.
(xi) A copy of any State permit that may be required, including a valid license issued by the State of Maine Department of Health and Human Services for food service. Mobile food handlers may operate only while such a valid license is in effect.
(xii) A copy of the required certificate of insurance.

(b) Fees. The following non-refundable fees shall be as established from time to time by Board of Selectmen order:
(i) Application processing fee, which shall accompany each application.
(ii) License for a season fee. The season shall run from May 1st to October 31st. The license fee shall be paid by the time the license is issued.
(iii) License for one day fee. The license fee shall be paid by the time the license is issued.
(iv) License for an event fee. An event license shall be valid for no more than seven (7) consecutive days. The license fee shall be paid by the time the license is issued.

(c) When to File Applications. Applicants shall file completed applications with the Town Planner and should allow at least fourteen (14) business days for review and investigation prior to action by the Board of Selectmen. No application shall be deemed complete and ready for Board of Selectmen action until the applicant has paid the application processing fee.

Section 7. Investigation of the Applicant.
Upon receipt of each completed application for a mobile food handler license, the following shall occur:
(a) The Code Enforcement Officer, or his designee, shall verify that the proposed location(s) comply with all applicable land use and parking ordinances of the Town and shall report such findings in writing to the Town Planner; and
(b) The Town Planner shall review the application and other documents and determine whether such documents comply with all of the requirements of this Ordinance and shall report such findings in writing to the Board of Selectmen.

Section 8. Prerequisites to Issuance of a License.
Prior to the issuance of any license under this Ordinance, the applicant shall demonstrate compliance with the requirements set forth herein. If a license is granted by the Board of
Selectmen, continued compliance with these requirements shall constitute a condition of the license.

(a) Insurance. The applicant shall obtain and maintain in full force and effect a policy of comprehensive general liability insurance with limits of not less than $400,000, naming the Town as additional insured. The certificate of insurance shall provide no less than a ten (10) day notice to the Town prior to cancellation of insurance.

(b) Location. The mobile unit shall not be operated in a way that will restrict or interfere with access to and from any building, abutting parcel or public place. No mobile unit may remain on a public road overnight.

(c) Traffic safety. The proposed location(s) of operation of the mobile unit shall not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of highways or public roads.

(d) Parking. There shall be at least one parking space for the mobile unit while it is being used to sell, or offer for sale, food products. The applicant shall provide evidence, by written agreement or other legal instrument, of control and possession of the parking space while the mobile unit is being used to sell, or offer for sale, food products. Adequate customer parking shall be provided, which shall be located outside of the traveled way of any road.

(e) Utilities. All utility connections shall be secure and safe.

(f) Waste. The mobile food handler’s operations area shall be kept clean and free of litter. At least one recycling receptacle and one trash receptacle shall be provided for customer use.

(g) Mobile Unit Design. The mobile unit design shall conform to the following:
   (i) Materials: All mobile units shall be made of durable materials.
   (ii) Size: Maximum size of a mobile unit shall be 150 square feet.
   (iii) A trailer hitch shall be visually identified for safety purposes with a wrapper, bicycle type flag or other similar identifying device which does not obstruct the clear area.
   (iv) Items used in association with the mobile unit, including, without limitation, any generator, propane tank, cooler, table or chair, shall be located within, or immediately adjacent to, the mobile unit.

(h) Signage. Any signage shall conform to the following:
   (i) No more than two (2) display signs, excluding lettering on an umbrella or awning, are permitted on each mobile unit. In addition, one menu board is permitted and shall be no larger than six (6) square feet. A menu board is not considered a sign.
   (ii) The maximum size of each display sign shall be four (4) square feet.
   (iii) Each sign face shall be counted as one sign.
   (iv) Permanent signs are prohibited.
   (v) Flashing, rotating, animated or changing lighting or signage is prohibited.

(i) Lighting. Lighting shall not create undue hazards to motorists, shall be adequate for the operators of the mobile unit, and shall not result in undue light shining on
nearby properties.

(j) Generators. The use of a generator may be allowed only with the advance approval of the Board of Selectmen.

(l) Prohibitions. The applicant shall comply with the following:
   (i) No animals shall be attached to the mobile unit except for guide animals.
   (ii) No amplified sound shall be allowed, and no licensee shall make noise so loud as to distract passing motorists.
   (iii) No open flame or heating unit in association with a mobile unit shall be available for non-licensee use.
   (iv) No seating area for customers shall be allowed unless Planning Board site plan review and approval is obtained, in which case the exemption from licensure under Section 5(b) of this Ordinance applies.

Section 9. License Issuance.
The Board of Selectmen may grant a license for a season, a single day or a single event as described in Section 6(b) above. After a license has been granted by the Board of Selectmen, the Town Planner shall issue the necessary paperwork to the licensee. Issued licenses shall contain the name and address of the licensee, the date of issuance, the length of time the license shall be operative (i.e., the date of expiration), the approved location(s) of operation of the mobile unit and associated parking, and an identifying description of any vehicle used in such mobile food handling. The Town Planner shall keep a record of all licenses issued for the prior five (5) years.

Section 10. Standards for Denial, Suspension or Revocation.
In addition to any other specific provision of this Ordinance authorizing action, a license may be denied, suspended or revoked by the Board of Selectmen upon a determination of the existence of one or more of the following grounds:
   (a) There has been a failure to fully complete the application forms or to pay any fee required hereunder; an incorrect statement of material fact has been made knowingly on such form; or there has been a knowing omission of material fact or additional documentation required or reasonably necessary to determine whether such license should be issued;
   (b) Failure to notify the Town Planner of any change of material fact set forth in the license application;
   (c) The applicant’s or the licensee’s business or professional conduct hereunder has been the source of one or more complaints of record that have been found to be valid and the conduct relates directly to the public health, safety or welfare;
   (d) The applicant/licensee has violated one of more provisions of this Ordinance or other Town ordinances, including, without limitation, the Town’s land use and licensing ordinances;
   (e) The licensee has violated any provision of this Ordinance in the course of the conduct of the activity for which the license has been applied for, or has been issued;
(f) The licensee has violated any condition of the license as set forth in Section 8 above in the course of the conduct of the activity for which the license has been issued; or
(g) The occurrence of any event subsequent to issuance of the license which event would have been a basis for denial of the license shall be grounds for revocation thereof.

Section 11. Emergency Contact Information Required.
All license holders shall provide emergency contact information to the Town Planner upon issuance of the license on a form provided by the Town.

Section 12. Posting of License.
Licenses must be posted in a conspicuous place on the mobile unit.

Section 13. Transferability of License.
No licenses shall be transferred.

Section 14. Enforcement; Violations.
This Ordinance shall be enforced by the Code Enforcement Officer, for whom the Town’s duly authorized law enforcement provider shall provide investigative and enforcement assistance. In addition to any action that may be taken by the Board of Selectmen with respect to the suspension or revocation of a license, violation of this Ordinance shall be a civil violation subject to a fine. The fine for a violation of this Ordinance shall be not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each offense. Each act of violation and every day that any such violation shall occur shall constitute a separate offense. In addition to the fines provided herein, the Town may enjoin or abate any violation of this Ordinance by appropriate action.

Section 15. 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 this Ordinance.

Section 16. 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 17. Amendments.
Amendments to this Ordinance may be made by a majority vote of the Town at any Harpswell Town Meeting and shall take effect upon enactment unless otherwise specified.

Section 18. Effective Date.
This Ordinance shall become effective upon its adoption.
MUNICIPAL FIREFIGHTER ASSISTANCE ORDINANCE OF HARPSWELL, MAINE

Enacted March 11, 2017, Article 40

WHEREAS, since at least the 1980s the Town of Harpswell (the “Town”) has provided for firefighting, fire protection and emergency medical services to the Town through emergency services agreements reached with the following three volunteer fire associations: (1) the Cundy’s Harbor Volunteer Fire Department Inc.; (2) Harpswell Neck Fire and Rescue, Inc.; and (3) the Orr’s & Bailey Islands Fire Department Inc.;

WHEREAS, the emergency services agreements referenced above describe the specific areas within the Town (“fire protection zones”) which are served by each of the three volunteer fire associations;

WHEREAS, the Town has identified a need to supplement the current fire and rescue service coverage provided by the volunteer fire associations in the three fire protection zones in order to prevent gaps in coverage that may occur at particular times of the day or week;

WHEREAS, the Town desires to provide assistance to the volunteer fire associations through the provision of municipal firefighters employed by the Town;

NOW THEREFORE, the Town of Harpswell hereby adopts this ordinance.

Section 1. Title.

This ordinance shall be known as the Municipal Firefighter Assistance Ordinance of Harpswell, Maine.

Section 2. Purpose.

The purposes of this ordinance are to establish a mechanism for providing personnel employed by the Town to assist the three volunteer fire associations, each organized as a corporation and with its own fire chief, in their mission of providing firefighting, fire protection and emergency medical services to the Town of Harpswell in each of three fire protection zones; to establish the boundaries of each fire protection zone; and to define the respective powers and duties of each fire chief and the Town in relation to the municipal firefighters employed by the Town, as well as the powers and duties of the municipal firefighters.
Section 3. Enactment.

Pursuant to Art. VIII, pt. 2 § 1 of the Maine Constitution, 30-M.R.S. § 3001 and § 3151 et seq., the municipality of Harpswell, Maine hereby enacts a Municipal Firefighter Assistance Ordinance.

Section 4. Definitions.

Fire protection zone: an administrative area established within the Town for firefighting, fire protection and rescues purposes, to be served by one fire department or volunteer fire association as provided under 30-A M.R.S. § 3152(2).

Municipal firefighter: An individual employed by and receiving compensation from the Town of Harpswell for aiding in the extinguishment of fires and/or providing emergency medical care.

Volunteer fire association: An organized firefighting unit incorporated under Title 13 or Title 13-B of the Maine Revised Statutes, and which is officially recognized by the Town.

Volunteer firefighter: an active member of a volunteer fire association who receives no compensation from the municipality other than injury or death benefits.

Section 5. Fire Protection Zones.

The following fire protection zones are established by this Ordinance:

A. The Cundy’s Harbor Fire Protection Zone: the area consisting of the portion of Great Island from the Brunswick Town Line south to the area near Steven’s Corner Road, including offshore islands. The Cundy’s Harbor Fire Protection Zone shall be served by the Cundy’s Harbor Volunteer Fire Department Inc.

B. The Harpswell Neck Fire Protection Zone: the area consisting of all of Harpswell Neck from the Brunswick Town Line south to the end of the peninsula, and those other peninsulas that extend from Harpswell Neck, including offshore islands. The Harpswell Neck Fire Protection Zone shall be served by Harpswell Neck Fire and Rescue, Inc.

C. The Orr’s & Bailey Islands Fire Protection Zone: the area consisting of Orr’s Island, Bailey Island and the portion of Great Island that is south and west of the Nazarene Church at 806 Harpswell Islands Road, including the church itself and offshore islands. The Orr’s & Bailey Islands Fire Protection Zone shall be served by the Orr’s & Bailey Islands Fire Department Inc.

Notwithstanding the geographic descriptions of the fire protection zones established above, the geographic scope of each fire protection zone may be amended from time to time by regulations adopted by the Board of Selectmen without the need for further town meeting approval and with mutual agreement of the Town and the affected volunteer fire associations.
Section 6. Powers and Duties of the Fire Chiefs.

A. Appointment. The Fire Chiefs for the Town’s three fire protection zones shall be appointed/elected according to the bylaws for each of the three volunteer fire associations above. Once appointed/elected Fire Chief by their volunteer fire association membership, each Fire Chief shall be appointed by vote of the Board of Selectmen as Fire Chief for their respective fire protection zones.

B. Powers and duties. The Fire Chiefs for the three volunteer fire associations shall exercise the powers and duties set forth in 30-A M.R.S. § 3153 in the Fire Chief’s fire protection zone. These powers and duties include but are not limited to the following:
   1. Each Fire Chief shall control and direct all municipal and volunteer firefighters in the performance of firefighting operations within the Fire Chief’s fire protection zone, except as provided otherwise herein.
   2. Each Fire Chief shall have the authority to issue rules, regulations, standard operating guidelines (collectively “Operating Documents”) necessary to operate their respective fire protection zones consistent with this Ordinance, Maine State law, and other applicable laws and regulations. The Board of Selectmen may review and amend such Operating Documents as it deems necessary.
   3. Each Fire Chief may establish rules and regulations concerning the provision of emergency services within their respective fire protection zones, including services to respond to public safety emergencies, medical emergencies, hazardous materials incidents or natural or man-made disasters. The Board of Selectmen may review and amend such regulations as it deems necessary.
   4. Each Fire Chief shall provide a training program for firefighters within their volunteer fire association, which training program may be held in cooperation with other volunteer fire associations, the Town and other appropriate governmental agencies. Such training programs held by each Fire Chief shall be open and available to municipal firefighters at the request of the Town Administrator or designee.
   5. Each Fire Chief shall prepare and submit annually to the Town Administrator or designee a budget relating to fire protection and rescue activities for and within their fire protection zone.

C. Reports. The Fire Chiefs shall submit reports, as deemed necessary by the Board of Selectmen, on the activities of their volunteer fire association and shall discharge such other duties as may be required by the Board of Selectmen.

Section 7. Powers and Duties of the Town.

A. Employment of municipal firefighters. The Town may hire one or more municipal firefighters to assist the voluntary fire associations in their firefighting and rescue operations. The Town shall be responsible for all decisions related to hiring, discipline and termination, in accordance with Town personnel policies and all other applicable policies, laws and rules applicable to municipal employees.
B. Management Structure. All municipal firefighters shall serve at the direction of the Board of Selectmen at all times except as provided herein. The powers and duties of the Town under this Ordinance shall include but are not limited to the following:

1. General supervision. All municipal firefighters shall report to the Town Administrator or designee, who has general day to day supervisory responsibility over and shall serve as a department head for each municipal firefighter employed by the Town.

2. Liaison between municipal firefighters and Fire Chiefs. The Town Administrator or designee shall serve as a liaison between the municipal firefighters and the Fire Chiefs for coordination and communication of work schedules, calendars, monthly call reports and other firefighting and rescue operations information.

3. Regulatory compliance. The Town Administrator or designee, in consultation with each Fire Chief, shall ensure that all municipal firefighters are in compliance with all applicable state and federal laws and regulations and that all necessary documentation is provided to state and federal regulatory agencies of compliance by municipal firefighters with same.

4. Training. The Town Administrator or designee shall make arrangements for all municipal firefighters to receive the training required by law. Such training may take place by way of a request by the Town Administrator or designee to include municipal firefighters in training sessions held by a volunteer fire association.

Section 8. Powers and Duties of Municipal Firefighters.

A. Town employee. Municipal firefighters shall be employed by the Town, shall receive compensation from the Town, and shall serve at the direction of the Board of Selectmen or designee at all times except as provided herein. Municipal firefighters shall be subject to the Town’s personnel policy and all other applicable policies, laws and rules applicable to municipal employees.

B. Powers and duties. Municipal firefighters employed by the Town shall have the powers and duties set forth in 30-A M.R.S. § 3151 et seq., and as set forth in any administrative rules and regulations adopted by the Municipal Officers. These powers and duties include but are not limited to the following:

1. Once a municipal firefighter has responded to a call, and while performing firefighting and/or rescue operations within a particular fire protection zone, a municipal firefighter shall serve under the direction, command and control of the Fire Chief, or the Fire Chief’s designee, or as provided by the Operating Documents for the fire protection zone to which the municipal firefighter has been called.
2. The Town, in consultation with the Fire Chiefs, may establish administrative rules and regulations consistent with this section addressing chain of command and other issues such as mutual aid and non-emergency activities performed by municipal firefighters, as approved by the Board of Selectmen.

3. All municipal firefighters shall attend training sessions as directed by the Town Administrator or designee unless excused.

4. Municipal firefighters shall be authorized to provide such other services as directed by the Town Administrator or designee, including emergency services within the Town, by responding to and managing other public safety emergencies, including, but not limited to, medical emergencies, hazardous materials incidents or natural or man-made disasters.

5. Municipal firefighters are responsible for complying with all applicable local, state and federal laws and regulations.

**Section 9. Privileges and Immunities.**

Municipal firefighters employed by the Town shall enjoy the privileges and immunities and benefits provided by the Maine Tort Claims Act and the Workers’ Compensation Act when acting in their capacity as firefighters and/or emergency rescue personnel.

**Section 10. Severability.**

The invalidity of any portion of this ordinance shall not invalidate any other part thereof.

**Section 11. Effective Date.**

The ordinance shall be effective upon its adoption by the Municipal Legislative Body.
Section 1. Purpose

Scientific studies have shown that certain Insect Growth Regulators (IGR), neonicotinoids and insecticides adversely affect aquatic invertebrates, especially molting shellfish such as lobsters and crabs. In addition to harming shellfish, these chemicals may interfere with beneficial insect species such as bees and lepidopteran pollinators (moths and butterflies). The Town of Harpswell is comprised of approximately 216 miles of coastline, numerous islands and narrow peninsulas such that discharges and runoff from inland areas are extremely close to coastal waters. The application of water soluble fertilizers is apt to runoff into the sea and overload it with nitrogen that causes algal blooms and coastal acidification which affect shellfish by inhibiting their shell formation. The purpose of this Ordinance is to establish regulations that will aid the Town in protecting and maintaining the health of its shellfish resources, marine environment, and pollinators.

Section 2. Definitions

**Aerial Spraying** – spraying by airplane.

**Insect Growth Regulator** – a substance or mixture of substances including, but not limited to, azadirachtin, diflubenzuron, and tebufenozide, that act to disrupt the action of insect hormones thereby interrupting or inhibiting the life cycle of insects.

**Insecticide** – a substance or mixture of substances intended to prevent, destroy, repel or mitigate insects.

**Licensed Applicator** – a person who applies pesticides, has passed certification exams and is licensed by the Maine Board of Pesticides Control.

**Neonicotinoid** – a class of neuro-active insecticides including, but not limited to, acetamiprid, clothianidin, imidaclorpid, nitenpyram, nithiazine, thiacloprid, and thiamethoxam.

**Pesticide** – any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest; any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant; and any nitrogen stabilizer. Herbicides, fungicides, insecticides, and rodenticides are considered pesticides. Multicellular biological controls, such as mites, nematodes, parasitic wasps, snails or other biological agents not regulated as pesticides by the U.S. Environmental Protection Agency, are not considered pesticides.

**Weed and Feed Fertilizer** – a mixture of fertilizer and pesticide.

Section 3. Prohibition and Restrictions on the Outdoor Use of Pesticides

a) The outdoor use of the following pesticides is prohibited in the Town of Harpswell except for use in conjunction with commercial agriculture, nurseries, or golf courses:
i. the use and/or application by any person by any method whatsoever of any Insect Growth Regulator (IGR) as defined, or;

ii. the aerial spraying of any Insecticide whose product label indicates that it is harmful to aquatic invertebrates.

b) No outdoor use of a pesticide shall be permitted within twenty-five (25) feet of the maximum high water line of a great pond, stream, tributary stream, the highest annual tide (HAT) of a coastal wetland or the upland edge of a freshwater wetland; except in conjunction with commercial agriculture, nurseries, or golf courses.

c) The outdoor use and/or application of any neonicotinoid insecticide whose product label indicates that it is harmful to bees or aquatic invertebrates is subject to the following restrictions except in conjunction with commercial agriculture, nurseries, or golf course.

i. Between twenty-five (25) and two hundred fifty (250) feet of the maximum high water line of a great pond, stream, tributary stream, the highest annual tide (HAT) of a coastal wetland or the upland edge of a freshwater wetland, the use of a neonicotinoid insecticide regulated by this ordinance must be done by a licensed applicator. Uses permitted by licensed applicators are limited to applications by stem injection or painting on wind pollinated trees or plants.

ii. Outside of the two hundred fifty (250) foot shoreland zone, neonicotinoid insecticides may be applied by:

   a) stem injection or tree painting to wind pollinated trees plants, or
   b) other application methods if applied by a licensed applicator.

Section 4. Use of Licensed Pesticide Applicators

Any application, for which compensation is paid, of general use pesticides, restricted pesticides, or weed and feed fertilizers, shall be done by a licensed applicator.

Section 5. Fertilizer Use Limitation

The outdoor use of fertilizers, except in conjunction with commercial agriculture, nurseries, or golf courses, is subject to the following limitations:

a) Within the shoreland zone:

   i. No fertilizer shall be applied within twenty-five (25) feet of the maximum high water line of a great pond, stream, tributary stream, the highest annual tide (HAT) of a coastal wetland or the upland edge of a freshwater wetland.

   ii. Between twenty-five (25) and two hundred fifty (250) feet of the maximum high water line of a great pond, stream, tributary stream, the highest annual tide (HAT) of a coastal wetland or the upland edge of a freshwater wetland, only non-water soluble fertilizer, compost, or composted manure may be applied.
b) Outside of the two hundred fifty (250) foot shoreland zone, water soluble chemical fertilizer, sludge or non-composted manure may be applied in addition to those allowed in Section 5(a)(ii).

Section 6. Exemptions

a) The following materials are not regulated by the provisions of this Ordinance:
   i. Pet supplies such as shampoos, tick and flea collars, and dusts;
   ii. Insect repellents;
   iii. Aerosol products; and
   iv. Application of materials or substances mandated by state or federal law.

b) The provisions of this Ordinance do not apply to the following uses:
   i. Commercial agriculture;
   ii. Nurseries;
   iii. Golf courses; and
   iv. Indoor uses

Section 7. Waiver

The Conservation Commission is authorized to grant waivers from the provisions of this ordinance when a pest presents: a) an immediate threat to human health, or b) an immediate threat of substantial property damage or loss. A waiver may only be granted to a licensed applicator for a specific use of a specific pesticide. The initial approval of a waiver shall be for a period of not more than thirty (30) days. The commission may grant a renewal of a waiver for a period of not more than three (3) years if it finds that the licensed applicator has performed satisfactorily, that the location of the treatment and the pesticide and method of application will be the same as the initial waiver, and that the need for the continuing waiver is the result of the same ongoing infestation or problem.

The licensed applicator who seeks a waiver shall apply to the Code Enforcement Officer. The application shall specify the specific nature of the situation requiring a waiver including an analysis of why other approaches for control of the pest cannot be utilized or will create greater risk to the marine environment and/or pollinators, the pesticide use for which the waiver is sought, the proposed method of application, and measures that will be taken to limit any adverse impacts on the marine environment or pollinators.

Upon receipt of an application for a pesticide use waiver or the renewal of an existing waiver, the CEO shall forward the application to the Conservation Commission which shall consider the application within fifteen (15) days. The Commission may obtain outside assistance in its review of the application.
The Commission shall approve the application only if it finds:

1. That there is an immediate threat to human health or an immediate threat of substantial property damage or loss,
2. That control methods allowed by the ordinance are not adequate to address the threat,
3. That the approach for controlling the pest for which the waiver is requested presents the least risk to the marine environment and/or pollinators, and
4. The licensed applicator will undertake measures to limit the potential adverse impacts on the marine environment.

A decision of the Conservation Commission with respect to the granting of a waiver may be appealed to the Board of Selectmen within fifteen (15) days of the Commission’s decision. The Board shall act on an appellate basis in reviewing the decision and may affirm or modify the Commission’s decision.

**Section 8. Enforcement**

When a violation of the provisions of this ordinance is suspected, the Code Enforcement Officer may require that the person, firm, or corporation that is the owner of or having control or use of the property, provide the Town with soil or leaf samples from a location on the property specified by the Code Enforcement Officer in sufficient quantity to permit laboratory testing of the soil or leaf in order to check for the presence of any Insect Growth Regulator (IGR) that prevents molting or inhibits exoskeletal formation or any Neonicotinoid or Insecticide whose product label indicates that it is harmful to aquatic invertebrates or bees.

a) This Ordinance shall be enforced by the Code Enforcement Officer. The Code Enforcement Officer is hereby authorized to institute or cause to be instituted, in the name of the town, any and all actions, legal or equitable, that may be appropriate or necessary for enforcement of this Ordinance.

The following procedure is available to the Code Enforcement Officer when he/she becomes aware of a possible violation of this ordinance and wishes to investigate it:

1) If there has been a complaint, the complainant shall document the nature of the complaint using a form provided by the Town and submit the completed form to the Code Enforcement Officer who may, in his/her discretion, choose to meet with the complainant.
2) Based on the information available, the Code Enforcement Officer shall make a preliminary determination as to whether there is a possible violation of this ordinance.
3) If there is a possible violation of the ordinance involving the use of fertilizers, the Code Enforcement Officer shall attempt to meet with the property owner and/or the applicator of the fertilizer to obtain information on the type of fertilizer applied.
4) If there is a possible violation of this ordinance involving the use of pesticides, the Code Enforcement Officer shall obtain information from the applicator of the material on the type and concentration of pesticide applied, the location and method of application, the conditions at the time of application, and any mitigation activities undertaken using a form provided by the Town.
5) If the Code Enforcement Officer believes that there could be a violation of the Maine Pesticide Control Board regulations, the Code Enforcement Officer shall contact the enforcement staff of the Board.

6) If there is agreement between the Code Enforcement Officer and the property owner and/or applicator that a violation has occurred, and that the violation was not a willful or repeat violation, the Code Enforcement Officer together with a representative of the Conservation Commission shall meet with the property owner and/or applicator to explain the requirements of this ordinance.

7) If the Code Enforcement Officer determines, based on this information, that there is an unresolved possible violation of this ordinance, he/she shall refer the case to the Board of Selectmen for further action.

b) The Board of Selectmen shall review any cases of possible violation of this ordinance referred to it by the Code Enforcement Officer to determine if a violation has occurred in accordance with the following:

1) The Board of Selectmen shall determine if a violation of the ordinance has occurred. In making this determination, the Board may retain outside expertise to evaluate the information collected and/or obtained by the Code Enforcement Officer, undertake sampling and testing for pesticides, and to provide professional guidance as to whether a violation has occurred. The Board may require the owner of the property subject to the review or the applicator to pay for the collection and testing of appropriate samples if a violation is found. If the Board determines that a violation has occurred, it shall pursue the legal remedies set forth in Section 9.

Section 9. Legal Remedies

When the Board of Selectmen determines that a violation of this ordinance has occurred in accordance with 8.b)1), the Board may enter into a consent agreement with the property owner and/or pesticides applicator setting forth appropriate remedies and remedial actions if necessary, or undertake any and all actions, legal or equitable against the property owner and/or applicator for violation of the ordinance. In the latter case, a person, firm, or corporation who uses or applies or causes to be used or applied any Insect Growth Regulator or Insecticide in violation of the Ordinance shall be subject to a fine of not less than $1,000 nor more than $2,500 for the first violation of this Ordinance. A fine of not less than $2,501 nor more than $5,000 shall be levied against any person, firm, or corporation violating this Ordinance for the second and each subsequent violation. Refusal to comply with the Code Enforcement Officer’s request for information on pesticide use or the collection of samples from the property shall result in a fine of not less than $1,000 and may result in further action by the Town in seeking an administrative inspection warrant for the property.

Section 10. Severability

To the extent any provision of this Ordinance is deemed invalid by a court of competent jurisdiction, the balance of the Ordinance shall remain valid.
Section 12. Table of Prohibitions and Restrictions

The following table provides an overview of the prohibitions and restrictions on the outdoor use of pesticides and fertilizers except for applications in conjunction with commercial agriculture, nurseries, and golf courses. Where there is conflict between the table and the descriptions in the preceding sections, the language of Sections 3, 4, 5 and 6 shall apply.

<table>
<thead>
<tr>
<th>HARPSWELL PESTICIDE/FERTILIZER PROHIBITIONS AND DISTANCE FROM WATER</th>
<th>SHORELAND ZONE</th>
<th>OUTSIDE SHORELAND ZONE</th>
</tr>
</thead>
<tbody>
<tr>
<td>CLASS OF PESTICIDE/ FERTILIZER</td>
<td>25’ BUFFER</td>
<td>25’ – 250’</td>
</tr>
<tr>
<td>Insect Growth Regulator (IGR)</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Neonicotinoids: Label indicates harmful to pollinators or aquatic invertebrates</td>
<td>X</td>
<td>Use only permitted by Licensed Applicator on wind pollinated trees or plants using stem injection or painting</td>
</tr>
<tr>
<td>All other pesticides</td>
<td>X</td>
<td>No restriction</td>
</tr>
<tr>
<td>Fertilizer</td>
<td>X</td>
<td>Compost Non water soluble nitrogen fertilizer</td>
</tr>
</tbody>
</table>

X = Use prohibited
PREAMBLE

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

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

WHEREAS, the Town of Harpswell (the “Town”) wishes to establish a PACE program; and

NOW, THEREFORE, the Town hereby enacts the following Ordinance:

ARTICLE I - PURPOSE AND ENABLING LEGISLATION

Section 1 - Purpose.

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

Section 2 - Enabling Legislation.

The Town enacts this Ordinance pursuant to 35-A M.R.S.A. § 10151, et seq.

ARTICLE II - TITLE AND DEFINITIONS

Section 3 - Title.

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

Section 4 - Definitions.
Except as specifically defined below, words and phrases used in this Ordinance shall have their customary meanings; as used in this Ordinance, the following words and phrases shall have the meanings indicated:

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

   A. Will result in increased energy efficiency and substantially reduced energy use and:

      (1) Meets or exceeds applicable United States Environmental Protection Agency and United States Department of Energy Energy Star program or similar energy efficiency standards established or approved by the Trust; or

      (2) Involves air sealing, insulating, and other energy efficiency improvements of residential, commercial or industrial property in a manner approved by the Trust; or

   B. Involves a renewable energy installation or an electric thermal storage system that meets or exceeds standards established or approved by the trust.

2. **Municipality.** “Municipality” shall mean the Town of Harpswell.

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

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

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

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

7. **PACE mortgage.** “PACE mortgage” means a mortgage securing a loan made pursuant to a PACE program to fund energy saving improvements on qualifying property.
8. **PACE program.** “PACE program” means a program established under State statute by the Trust and a municipality under which property owners can finance energy savings improvements on qualifying property.

9. **Qualifying property.** “Qualifying property” means real property located in the PACE district of the Municipality.

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

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

**ARTICLE III - PACE PROGRAM**

**Section 5 - Establishment; funding.**

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

**Section 6 - Amendment to PACE program.**

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

**ARTICLE IV – CONFORMITY WITH THE REQUIREMENTS OF THE TRUST**

**Section 7 - Standards adopted; Rules promulgated; model documents.**
If the Trust or other State or federal agency adopts standards, promulgates rules, or establishes model documents subsequent to the Municipality’s adoption of this Ordinance and those standards, rules or model documents substantially conflict with this Ordinance, the Municipality shall take necessary steps to conform this Ordinance and its PACE program to those standards, rules, or model documents.

ARTICLE V – PROGRAM ADMINISTRATION; MUNICIPAL LIABILITY

Section 8 - Program Administration.

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

   A. the Trust will enter into PACE agreements with owners of qualifying property in the Municipality’s PACE district;

   B. the Trust, or its agent, will create and record a Notice of the PACE agreement in the appropriate County Registry of Deeds to create a PACE mortgage;

   C. the Trust, or its agent, will disburse the PACE loan to the property owner;

   D. the Trust, or its agent, will send PACE assessment statements with payment deadlines to the property owner;

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

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

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

2. **Assistance and Cooperation.** The Municipality will assist and cooperate with the Trust in its administration of the Municipality’s PACE program.

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

Section 9 - Liability of Municipal Officials; Liability of Municipality.
1. Notwithstanding any other provision of law to the contrary, municipal officers and municipal officials, including, without limitation, tax assessors and tax collectors, are not personally liable to the Trust or to any other person for claims, of whatever kind or nature, under or related to a PACE program, including, without limitation, claims for or related to uncollected PACE assessments.

2. Other than the fulfillment of its obligations specified in a PACE administration contract with the Trust entered into under Article VI, Sec. 8(1) above, a municipality has no liability to a property owner for or related to energy savings improvements financed under a PACE program.
Frequently Asked Questions (FAQ) about Home Energy Savings Loans and Property Assessed Clean Energy (PACE) in Maine

Efficiency Maine administers programs to improve comfort and lower energy costs for energy consumers in Maine. This FAQ answers basic questions for municipal officials and civic leaders about the Home Energy Savings Loan fund and PACE in Maine.

What is the Home Energy Savings Loan Fund?

In December 2009, Efficiency Maine, at that time a division of the Maine Public Utilities Commission (PUC), submitted a grant proposal to the United States Department of Energy (US DOE) for federal stimulus funds (the American Recovery and Reinvestment Act or ARRA). Efficiency Maine proposed to establish a revolving loan fund to finance energy efficiency improvements to buildings in Maine.

In April, 2010, the US DOE announced that Efficiency Maine was among 25 winners nationwide, and that it would receive funding to establish a $20 million revolving loan fund accessible to homeowners across the entire state. The Home Energy Savings Loan Fund will help Maine homeowners finance the costs of insulating, air sealing, and heating system upgrades in conjunction with the rebates offered under Efficiency Maine’s Home Energy Savings Program (HESP).

What does the Loan Fund have to do with PACE?

Also in April 2010, the Maine legislature enacted a law authorizing municipalities to adopt Property Assessed Clean Energy (PACE) programs and record PACE loans (described below) with the property in the registry of deeds. Because of this law, any municipality in Maine is now authorized to adopt an ordinance establishing a PACE program. LD 1717 - An Act To Increase the Affordability of Clean Energy for Homeowners and Businesses.

Although municipalities now have authority to establish a PACE program and the resulting loans, this does not answer the question of where the capital will come from to fund and administer the loans. Efficiency Maine’s Loan Fund, using the grant from the US DOE, provides this capital for the initial phase of loans.
What is the role of the Efficiency Maine Trust in PACE?

On July 1, 2010, the functions and duties of Efficiency Maine, and for all energy efficiency programs in Maine, were transferred from the PUC to the Efficiency Maine Trust, an independent, not-for-profit, quasi-state agency. Created by legislation in June 2009, the Trust (still called “Efficiency Maine”) is governed by a stakeholder board of directors and tasked with implementing a three-year plan. The plan is approved by the board and the PUC, and is designed to save Maine consumers money through energy efficiency and renewable energy programs. Implementation of both the PACE law and the revolving loan grant is now the responsibility of the Trust.

What is a PACE loan?

In Maine, a PACE loan is a loan taken by a property owner to finance the cost of making a qualified “energy savings improvement” to their property. What makes a PACE loan different from other loans is that it stays with the property receiving the improvement. If a homeowner sells his or her home before the loan is paid off, the loan can either be paid off at the time of sale or can be transferred with the property to become the responsibility of the new owner.

What is an Energy Savings Improvement

An energy savings improvement is a measure to improve the energy efficiency or upgrade the heating system of a house. Common examples are insulation, air sealing (foam and calk), efficient hot water heaters, and better controls and thermostats for furnaces and boilers. Efficiency Maine will provide more guidance on what energy savings improvements qualify for PACE loans in Maine, but for now promoters of the programs can look to the standards and criteria used in Efficiency Maine’s Home Energy Savings Program (HESP) and the PACE law LD 1717.

To be eligible for coverage by a PACE loan, Maine’s PACE law states that any energy savings or renewable measure must meet Efficiency Maine’s “cost effectiveness” test. Efficiency Maine’s definition of cost effectiveness is that total financial benefits of a project are greater than the total financial costs, over the useful lives of the individual measures installed on the project.

Why is a PACE loan program important?

Maine’s PACE loan program helps homeowners by providing a loan to pay for cost-effective energy efficiency improvements.
Many homeowners could dramatically lower their energy bills through cost-effective energy efficiency improvements, but they lack the financial means necessary to pay the upfront cost of these improvements.

Maine’s low-income customers can work their local CAP agencies to get financial assistance that will pay for 100% of a home weatherization project.

At the beginning of 2010, Efficiency Maine initiated the Home Energy Savings Program (HESP) for Mainer’s of all income levels offering cash rebates for weatherization and efficiency measures that reduce energy use by 25% or more. Even with this generous program, a homeowner participating in the Efficiency Maine HESP program will still face out of pocket costs for whatever amount of the overall project costs the rebates and federal tax credits do not cover. Depending on the size of the project, this out of pocket cost can reach from just a few thousand dollars to $15,000 or more. While a good deal in the long haul, it can be hard for homeowners to find the “up front” money. Financing, such as from Efficiency Maine’s Home Energy Savings Loans, can provide this needed up front money. By using a PACE loan, homeowners can be assured that if they move before the loan is paid off, the loan can be passed to the next homeowner.

**Why should my community adopt a PACE ordinance?**

Any municipality may elect to establish a PACE program, but there is no obligation to do so.

The new law in Maine states that a homeowner can only get a PACE loan for his or her property if the property is located in a municipality that has adopted a PACE ordinance. The homeowner may be able to get another kind of loan, but until the municipal government has adopted a PACE ordinance, residents in their town cannot get a PACE loan.

As described above, by adopting a PACE ordinance your community also makes it possible for Efficiency Maine to finance PACE loans through its Home Energy Savings Loans funds for the residents of your community. This will help residents in your town finance energy efficiency improvements to their homes today, while giving them assurance that they can transfer the loan if they move before it is paid off.

**How does a municipality participate in a PACE program?**

First, a municipality must decide if it wants to enable its residents to put PACE loans on their property. To start this process, a municipality must adopt a PACE ordinance.
Second, the participating municipality should decide if it wants to raise its own funds to finance residents home energy savings loans, or if it wants to access Efficiency Maine’s revolving loan fund for this purpose. If a participating town wants its residents to have access to the Efficiency Maine revolving loan fund, it should adopt a PACE ordinance that will make this possible. A Model PACE Ordinance to have access to the Efficiency Maine revolving loan fund can be found [here](#).

The municipality must also discuss with Efficiency Maine what administrative model it will employ and sign an Administrative Contract with Efficiency Maine to specify each parties’ role in the program. A model PACE Administration Contract with Efficiency Maine, in which the municipality opts to delegate administrative responsibilities to the Trust, is being developed and will be available on the website soon.

Third, to help its residents access energy savings measures, a municipality should develop a public outreach and education plan to raise awareness about the benefits of home energy savings measures, available rebates, the loan program, and how customers can get started.

**Who is eligible to benefit from a PACE loan?**

In a town that has established a PACE program, any residential property owner is eligible to benefit from a PACE loan so long as the property and its owner meet the following criteria established in Maine’s PACE law (LD 1717):

- The homeowners have a debt-to-income ratio of not more than 43%
- Property taxes and sewer charges are current on the property
- The property is not subject to any outstanding or unsatisfied tax or sewer liens
- The property is not subject to a reverse mortgage
- The property is not subject to a mortgage or other lien on which there is a recorded notice of default, foreclosure, or delinquency that has not been cured
- The energy improvements being proposed for the project meet the Efficiency Maine standards for “cost effectiveness.”

**Who administers the PACE program?**

Across the state, Efficiency Maine will develop the necessary rules to implement the new PACE law, and will establish the revolving loan fund with the money received from the US DOE grant.

Efficiency Maine will also offer to service the loans for each participating town, and will assign this service to a third party provider, at no cost to the town.
The exact model for this service will be finalized by mid-November 2010, and will include processing the loan applications, originating loans, collecting and tracking all of the loan payments, and handling defaults. Centralizing all of these tasks is intended to keep costs low. As noted above, the division of roles for administration of the PACE program is determined in the agreement between the municipality and the Efficiency Maine Trust. In an attempt to make this program very easy for municipalities, Maine’s PACE law authorizes the municipality to delegate the administrative functions of a PACE program to the Trust.

Even under the model where all administrative tasks are delegated to Efficiency Maine, however, the municipality’s role remains very important. At a minimum the municipality needs to be able to advise Efficiency Maine loan originators if an applicant’s property has outstanding taxes, charges or liens or delinquencies that have not been cured.

Another possible model is that the town may choose to administer much of the PACE loan program itself, processing the loan applications, collecting and tracking all loan payments, transferring payments to Efficiency Maine’s revolving loan fund (as appropriate), and handling defaults.

Why does Efficiency Maine want to administer the program and be a party to the loan agreement?

Efficiency Maine won the grant from the U.S. Department of Energy in part because it proposed a “revolving loan” program to keep the funding going for a full decade after the initial federal grant funds are exhausted. Repayment of PACE loans will generate a continuing revenue stream, so Efficiency Maine can replenish the loan fund at no cost to Maine taxpayers and keep interest rates low.

One option to leverage that revenue is to sell the pool of loans on the secondary market. Another option is for Efficiency Maine, working with other agencies, to issue revenue bonds at an attractive price. Issuing revenue bonds, at no cost to Maine taxpayers, will generate funds to keep the loan pool going for a decade so that more and more Maine homeowners can make energy efficiency improvements to increase their comfort and lower their energy bills. Whatever approach is used, the payments on the loans need to come back to Efficiency Maine or its authorized agents to make the fund sustainable and available for future loan participants.

Another reason for Efficiency Maine to administer the program is to make it as easy as possible for homeowners to access this financing. Because Efficiency Maine is authorized to make the rules for underwriting and disclosure, we are working to establish a loan process that is fast and minimizes the hassle. By contracting with a
centralized loan servicer as our authorized agent, Efficiency Maine can ensure that there is always someone on call who knows all the details of the program and can help homeowners through the process quickly and efficiently. For many municipalities in Maine, having this centralized service available will be the most affordable and efficient way to administer the program.

**What liability falls to the municipality?**

Other than fulfillment of its obligations as set forth in its agreement with the Efficiency Maine Trust, a participating “municipality has no liability to a property owner for or related to energy savings improvements financed under a PACE program.” See §10154 (2)(D) of the Enabling Legislation. Additionally, the enabling legislation specifies that “municipal officers and municipal officials, including, without limitation, tax assessors and tax collectors, are not personally liable to the [Efficiency Maine] Trust or to any other person for claims, of whatever kind or nature, under or related to a PACE program...including, without limitation, claims for or related to uncollected PACE assessments.” See §10154(2)(C).

**Can businesses apply for a PACE loan?**

Although both the enabling state law and the model PACE ordinance do allow for businesses that own property to apply for a PACE loan, the Efficiency Maine Trust currently plans to administer the $30 million in DOE funds via the Home Energy Savings Program that only applies to residential property. At this time, there will not be funding provided by the Efficiency Maine for a business PACE program. However, municipalities can provide that financing themselves. Additionally, Efficiency Maine currently offer low-interest rate loans of up to $35,000 for small businesses. You can find more information on Efficiency Maine’s non-PACE energy efficiency loan program for small businesses [here](#).

**What is the term (duration) of a PACE loan?**

The duration of the PACE loan must be shorter than the expected useful life of the installed energy efficiency improvements. To maximize the attractiveness of the loans and the sustainability of the loan pool, Efficiency Maine wants to ensure the option that the annual payments on the loan are less than the annual avoided costs of purchasing energy. Efficiency Maine is offering three loan terms, 5, 10, and 15 years to be chosen by the applicant.

**What is the interest rate associated with a PACE loan?**
The interest rate for new PACE loans has not yet been determined. We anticipate that PACE loans will be available in 2010 at interest rates at or below 5%. The interest rate for any particular PACE loan will be fixed as of the date of the agreement between the loan administrator and the property owner. The Trust will review and adjust the offer rate time to time to ensure the sustainability of the program.

**What is the responsibility of the property owner who uses PACE funding to make energy efficiency improvements?**

A property owner will be obligated to use the PACE funding for its intended energy efficiency improvement purposes and to repay the loan for the shorter of either 1) the agreed upon term of the loan or 2) the period of time in which the owner continues to own the property (if the homeowner sells the property, then the new owner takes on the responsibility for loan repayment).

**What happens to a PACE loan upon a sale of the property?**

A PACE loan “runs with the property, not with the person.” Thus, for example, if a property owner has a 6 year period in which to repay a PACE loan and sells his/her property 3 years after making the energy efficiency improvements, the property owner will have made 3 years of repayments of the PACE loan and will have enjoyed 3 years of the energy savings realized. The new owner of the property will get the benefit of the energy savings going forward and will have the obligation of making the payments for the final 3 years of the PACE loan. PACE loans can be paid off or transferred at time of closing.

**Is it true that the PACE program in Maine is invalid or opposed by financial regulators?**

No.

You may have seen or heard press articles in June, July and August, 2010 about how the Federal Housing Finance Administration (FHFA), who regulates home mortgage holders Fannie Mae and Freddie Mac, opposed PACE programs. But these articles are about priority lien status PACE programs in other states where they adopted a different approach than did Maine.

Outside of Maine, people commonly define a PACE agreement as a special assessment recorded on the property. Such assessments may collected through the property tax system. The mortgage industry has complained that under this system, if the homeowner should default on his or her payments it could create a senior (or “first”, or “priority”) lien that would interfere with the industry’s ability to resolve the home mortgage or clear title to the property.
In passing LD 1717 to authorize PACE loans in Maine, the state legislature decided not to establish a PACE system that might interfere with the priority (seniority) of home mortgages. Instead, a PACE assessment in Maine is secured by recording a “notice of a PACE agreement” in the registry of deeds, creating a PACE mortgage on the property.

In Maine, a PACE mortgage is not entitled to any special or senior priority. The PACE mortgage is junior and subordinate in priority to the first mortgage, regardless of the date that any of the mortgages were recorded.

**Who can I contact about establishing a PACE program in my community and related PACE information.**

Please contact Dana Fischer or Peter Roehrig at Efficiency Maine if you are interested in establishing a PACE program in your community or in playing some role related to a PACE program.
I. Authority. This parking ordinance is adopted pursuant to 30-A M.R.S.A. §3009(C).

II. Purpose. This Ordinance is intended to protect public health and welfare by regulating the parking of motor vehicles on Harpswell Neck Road and Mountain Road. Unrestricted parking on the Town road creates traffic congestion, prevents the passage of fire and police equipment, impedes winter maintenance and is dangerous to pedestrians and motorists. The purpose of this Ordinance is to reduce these dangers and to regulate parking as necessary to protect public health, safety and welfare.

III. Definitions. Words used in this Ordinance shall be defined in accordance with 29-A M.R.S.A. § 101; any undefined word shall have its common, ordinary meaning.

IV. Regulated Area. When signs are erected giving notice thereof, no person shall park any motor vehicle in regulated areas on Harpswell Neck Road and Mountain Road at any time. The regulated areas are both sides of each road for a distance extending 500 feet from their intersection.

V. Towing: Any motor vehicle parked in violation of the Ordinance may, at the request and under the direction of the Board of Selectmen or its duly appointed designee, be towed to a suitable garage or storage space and impounded thereon until all towing and storage fees are paid. The Board of Selectmen or its duly appointed designee may use such force as may be necessary to enter such motor vehicle and cause the same to be placed in a condition to be moved, and may employ any reputable person engaged in the business of towing or storing vehicles for such purpose. When any motor vehicle is towed pursuant to this Ordinance, the following procedures shall be followed:

1. Notice shall be sent to the registered owner of the motor vehicle by regular first-class mail, postage pre-paid, within 24 hours following the tow.

2. The Notice shall contain the following information:
   (a) registration number and brief description of the vehicle;
   (b) name and address of person or company who performed the tow;
   (c) location where the vehicle is stored;
   (d) the provisions of the Ordinance that were violated and led to the tow; and
   (e) the towing fee and any storage fee.
VI. Release of Towed Vehicle: Any person seeking release of a motor vehicle towed pursuant to this Ordinance must first (a) pay all towing charges and storage charges; and (b) present satisfactory evidence of his or her right to possession and sign a receipt for the motor vehicle.

VII. Prima Facie Evidence of Operation: No person shall cause, allow or permit a motor vehicle registered in his or her name to park in violation of this Ordinance. The fact that a motor vehicle is unlawfully parked shall be prima facie evidence of the unlawful parking of such vehicle by the person in whose name such vehicle is registered.

VIII. Enforcement and Penalties: This Ordinance shall be enforced by the Board of Selectmen or its duly appointed designee. This Ordinance may be enforced by the Cumberland County Sheriff’s Department, a constable of the Town of Harpswell and any other law enforcement agency, authorized by law to enforce parking ordinances. A violation of this Ordinance is a civil violation punishable by a fine of $50. Any person charged with a violation of this Ordinance may waive court action by paying a fee of $25 to the Town Clerk within 14 days of the violation. All fines and waiver fees shall accrue to the benefit of the Town.

IX. Severability: In the event that any portion of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue in full force and effect.

X. Repeal of Prior Ordinance: Upon adoption of this Ordinance, any prior parking ordinance for the affected area is repealed.

XI. Effective Date: This Ordinance shall become effective when adopted by a majority of the Board of Selectmen.

Date adopted: May 25, 2006
PROPERTY TAX ASSISTANCE PROGRAM
Reimbursement for the 2017 State Property Tax Fairness Credit

Application Deadline – October 15, 2018

Name: ____________________________________________________________

Property Address: ________________________________________________
_________________________________________________________________
_________________________________________________________________

Home Phone Number: ___________________________ Map and Lot Number (on Property Tax Bill): __________

If different from property address please provide mailing address below:
_________________________________________________________________
_________________________________________________________________

Please answer the following questions:

1. Has the applicant owned or rented a home in the Town of Harpswell at the
time of application and for the entire year prior to the date of application? YES NO

2. Has the applicant filed Form 1040ME and the Property Tax Fairness Credit
   (PTFC) for 2017? If yes, provide confirmation of credit.
   You can contact the State at 626-8475 to obtain proof or give permission for the Town to obtain proof.
   Please provide the Town of Harpswell, on my behalf, confirmation that I applied for and
   of the amount of credit I received from the State of Maine 2016 Property Tax Fairness Credit.

   ___________________________ Social Security #
   Signature

3. If the applicant is a Harpswell homeowner, has he/she applied for a homestead? YES NO

4. Has the applicant (if owner) paid the 2017 property taxes in full? YES NO

5. If you paid rent in 2017, list your landlord’s name and telephone number and provide a copy of lease or, if
   no lease, other evidence of rental: _____________________________________________________________

I declare that I have examined this application and to the best of my knowledge and belief, it is true,
correct and complete.

_________________________________________  ________________
Signature of Applicant                        Date

If you need any assistance with the completion of this form please contact the Deputy Town Administrator
Terri Sawyer at 833-5771.
Section 1. Purpose

The purpose of this Ordinance is to establish a program pursuant to Chapter 907-A of Title 36 of the Maine Revised Statutes to provide property tax assistance to qualifying persons who reside in the Town of Harpswell. Under this program, the Town of Harpswell will provide supplemental cash refund payments to those individuals who qualify as Harpswell resident beneficiaries of the State of Maine Residents Property Tax Fairness Credit pursuant to Chapter 822 of Title 36 of the Maine Revised Statutes, as may be amended from time to time, and meet the criteria established by this Ordinance.

Section 2. Definitions

Homestead: A homestead is a dwelling owned or rented by the person seeking tax assistance under this Ordinance or held in a revocable living trust for the benefit of that person. The dwelling must be occupied by that person.

Property Tax Assistance Program: The program established by the Town of Harpswell under this Ordinance. Also referred to as the “Program.”

Property Tax Fairness Credit Program: The property tax credit established by the State of Maine pursuant to 36 M.R.S.A. §§ 5219-II, 5219-KK, as may be amended from time to time.

Qualifying applicant: A qualifying applicant is a person who is determined, after review of a complete application under Section 4 of this Ordinance, to be eligible for a refund payment under the terms of this Ordinance.

Town Administrator: The Town Administrator or his/her designee.

Section 3. Criteria for Participation

In order to participate in the Property Tax Assistance Program, an applicant must demonstrate all of the following:

a. That the applicant has a homestead in the Town of Harpswell at the time of application and for the entire year prior to the date of application.

b. That the applicant has received a tax credit under the provisions of the State of Maine Residents Property Tax Fairness Credit Program.

c. That the applicant has paid property taxes in full for the year for which the refund is requested.
Section 4. Application and Payment Procedures

Persons seeking to participate in the Property Tax Assistance Program shall submit a written request to the Town Administrator no later than October 15 of each year. Applications are required every year to participate in the Program. The Town Administrator shall provide an application form for the Program, which shall include, at a minimum, the applicant’s name, homestead address and contact information. As part of the application to the Town, the applicant shall authorize the Town to seek documentation from Maine Revenue Services of proof and dollar amount of State Property Tax Fairness Credit received by applicant. The Program is based on the State Property Tax Fairness Credit and relates to property taxes assessed and paid or rent paid in the preceding calendar year. The Town Administrator shall review and determine if the application is complete and accurate and if the applicant is otherwise eligible to participate in the Program. The Town Administrator shall notify an applicant if an application is determined to be incomplete or inaccurate. The Town Administrator’s decision on eligibility to participate in the Program shall be final.

Section 5. Determination of eligibility and amount of eligibility

If the Town Administrator determines that the applicant is eligible to participate in the Program, he/she shall determine the total amount of such eligibility. Eligibility shall be the lesser of the following amounts but in no case shall the Town’s refund exceed the property taxes assessed and paid less the State Property Tax Fairness Credit:

a. The amount of credit qualified for under the Property Tax Fairness Credit Program;

b. A pro rata share of available monies in the Program Fund based on the amount of one’s State Property Tax Fairness Credit; or

c. $800.00.

The Town Administrator shall report to the Board of Selectmen each year the projected payments and number of eligible applicants requesting assistance from the Program fund.

Section 6. Program Fund – Limitations upon payments

Payments under this Ordinance shall be conditioned upon the existence of sufficient monies in the Program Fund for the fiscal year in which participation is sought. If there are not sufficient monies in the Program Fund to pay all qualifying applicants in full under this Ordinance, payments shall be limited to the amounts available in the Program Fund on a pro rata basis to each eligible participant based on the amount of one’s State credit under the Property Tax Fairness Credit Program. In the event that a lack of funding results in no payment or less than the full payment to a qualifying applicant, the request will not carry over to the next year.
Section 7. Creation of the Program Fund

The Program Fund from which payments shall be made under the terms of this Ordinance shall be created as follows:

As funds are available, the Board of Selectmen shall propose to the annual town meeting an appropriation of monies from the general fund or other sources to support this Program. Any surplus monies available after all payments have been made shall remain in the dedicated reserve account hereby established for this Program and shall not lapse into the Town’s undesignated fund balance.

Section 8. Timing of Payments

A person who qualifies for payment under the Program shall be mailed a check for the full amount (or pro-rated amount if inadequate funds are available) no later than December 1 for the year in which participation is sought.

Section 9. Limitations upon payments

Only one qualifying applicant per homestead shall be entitled to payment under this Program each year. The right to file an application under this Ordinance is personal to the applicant and does not survive the applicant’s death, but the right may be exercised on behalf of the applicant by the applicant’s legal guardian or attorney-in-fact. If an applicant dies after having filed a timely complete application that results in a determination of qualification, the amount determined by the Town Administrator shall be disbursed to another member of the household as determined by the Town Administrator. If the applicant was the only member of a household, then no payment shall be made under this Ordinance.
Ordinance for the Recall of Elected Officials
of the Town of Harpswell
Enacted March 13, 2005
Amended March 14, 2009

SECTION 1. Authority
This Ordinance is adopted pursuant to Title 30-A MRSA § 2602(6).

SECTION 2. Applicability
Any elected official of the Town of Harpswell, Maine, may be recalled and removed from office as provided herein.
This Ordinance does not apply to Directors of S.A.D. 75.

SECTION 3. Grounds for Recall
An elected official may be recalled for (a) failure to appropriately carry out the duties and responsibilities of the office; (b) engaging in conduct which brings the office into disrepute; (c) engaging in conduct which displays an unfitness to hold the office; or (d) for the indictment or conviction of a crime under the laws of the State of Maine or a felony under the laws of the United States or entry of a plea of guilty to such an offense.

SECTION 4. Petitions for Recall
a. Only registered voters of the Town of Harpswell may sign petitions for recall. To be valid the recall petition shall contain a number of valid signatures equal to twenty-five percent (25%) of the number of votes cast for Governor in the last gubernatorial election in Harpswell.

b. The petition shall be addressed to those members of the Board of Selectmen who are not subjects of the petition; if petitions for the recall of all Selectmen are submitted, the petitions shall be addressed to the Town Clerk.

c. The petition shall state the name and office of the person whose removal is being sought and shall list the specific reasons for recall and cite specific examples of behavior for which recall is being sought.

d. If recall of more than one person is being sought, there shall be a separate petition for each person whose removal is being sought.

e. Each page of the petition shall provide a space for each voter’s signature, address and printed name.

f. All petition pages shall be filed as a single document.

g. At the bottom of each page of the petition, the circulator of that page shall certify that to the best of his or her knowledge, each signature is genuine.
SECTION 5. Clerk’s Certification

Within ten (10) days of the receipt of the petition, the Town Clerk, or Deputy Town Clerk in cases where the removal of the Town Clerk is sought, shall certify the signatures contained on the petition and shall determine if the petition meets all of the procedural qualifications as set forth in Section 3 and 4 of this Ordinance. Should the petition be found insufficient, the petition shall be filed in the Clerk’s office and the voter who filed the petition shall be notified.

SECTION 6. Calling the Recall Election

a. If the petition is certified by the Town Clerk to be sufficient, he or she shall submit the same with his or her certification to the Board of Selectmen at their next regular meeting and shall notify the person or persons whose removal is being sought of such action.

b. The Selectmen, upon receipt of the certified petition, shall within ten (10) days time of receipt order an election by secret ballot, pursuant to 30-A MRSA § 2528 to be held not less than 45 nor more than 60 days thereafter, provided that a regular municipal election is not scheduled to be held within 90 days of receipt of the certified petition and, in this case, the Selectmen may at their discretion provide for the holding of the recall election on the date of the regular municipal election.

c. In the event that the Selectmen fail or refuse to order an election as herein provided, the Town Clerk shall call the election to be held not less than 45 days nor more than 60 days following the Selectmen’s failure or refusal to order the required election.

d. If at any time between the time of ordering the election and the date of the election the person whose recall is sought requests a public hearing, the Selectmen shall promptly schedule such a public hearing on the recall election.

SECTION 7. Ballots for the Recall Election

Unless the official(s) whose removal is being sought resigns within ten (10) days of receipt of the certified petition by the Board of Selectmen, the ballots shall be printed and shall read: “SHALL __________________ BE RECALLED?” with the name of the person whose recall is being sought inserted in the blank space.

SECTION 8. Result of Election

If a fifty-five percent (55%) majority of those voting in a recall election shall vote in favor of recalling such official, such official is thereby removed from office upon certification of the vote by the Town Clerk or Deputy Town Clerk.

SECTION 9. Vacancies to be Filled

Any vacancy resulting from removal from office under this Ordinance shall be filled in accordance with the provisions of Maine law.
Section 1. Purpose and Authority
The purpose of this "Ordinance Restricting Vehicle Weight on Posted Ways" (hereinafter, the "Ordinance") is to prevent damage to town ways and bridges in the Town of Harpswell which may be caused by vehicles of excessive weight, to lessen safety hazards and the risk of injury to the traveling public, to extend the life expectancy of town ways and bridges, and to reduce the public expense of their maintenance and repair. This Ordinance is adopted pursuant to 30-A M.R.S.A. § 3009 and 29-A M.R.S.A. §§ 2395 and 2388.

Section 2. Definitions
The definitions contained in Title 29-A M.R.S.A. shall govern the construction of words contained in this Ordinance. Any words not defined therein shall be given their common and ordinary meaning.

Section 3. Restrictions and Notices
The municipal officers or their duly authorized designee may, either permanently or seasonally, impose such restrictions on the gross registered weight of vehicles as may, in their judgment, be necessary to protect the traveling public and prevent abuse of the highways, and designate the town ways and bridges to which the restrictions shall apply.

Whenever notice has been posted as provided herein, no person may thereafter operate any vehicle with a gross registered weight in excess of the weight limit during any applicable time period on any way or bridge so posted unless otherwise exempt as provided herein.

The notice shall contain, at a minimum, the following information: the name of the way or bridge, the gross registered weight limit, the time period during which the restriction applies, the date on which the notice was posted, and the signatures of a majority of the municipal officers (or facsimile thereof). The notice shall be conspicuously posted at each end of the restricted portion of the way or bridge in a location clearly visible from the traveled way.

Whenever a restriction expires or is lifted, the notices shall be removed wherever posted. Whenever a restriction is revised or extended, existing notices shall be removed and replaced with new notices. No person may remove, obscure or otherwise tamper with any notice so posted except as provided herein.

Section 4. Exemptions
A. The following vehicles are exempt from this Ordinance:

1. Any vehicle or combination of vehicles registered for a gross weight of 23,000 pounds or less;
2. Any vehicle or combination of vehicles registered for a gross weight in excess of 23,000 pounds and traveling without a load other than tools or equipment necessary for the proper operation of the vehicle. This exemption does not apply to special mobile equipment;
3. Any vehicle while engaged in highway maintenance or repair under the direction of the State or Town;
4. Any emergency vehicle (such as firefighting apparatus or ambulances) while responding to an emergency;
5. Any school transportation vehicle;
6. Any public utility vehicle while providing emergency service or repairs;
7. Any wrecker towing a disabled vehicle;
8. Any septic tank truck on an emergency pump, not to exceed 13,275 pounds maximum payload or 40,275 pounds maximum permitted gross weight;
9. Any vehicle whose owner or operator holds a valid permit issued by the municipal officers as provided herein; and
10. Any vehicle, including a vehicle transporting home heating fuel, whose gross vehicle weight does not exceed the listed gross vehicle weights for the truck type and tire widths as outlined on Attachment A.

B. The weight limitation as indicated on a posted notice does not apply when the closed section of the roadway is solidly frozen, which is defined as (i) an air temperature of 32 degrees or below; and (ii) no water showing in the cracks of the road (if paved) or less than 1/2" of “thaw” on the road (if gravel surface).

Section 5. Permits
The owner or operator of any vehicle not otherwise exempt as provided herein may apply in writing to the municipal officers for a permit to operate on a posted way or bridge notwithstanding the restriction. The municipal officers or their duly authorized designee may issue a permit only upon all of the following findings:
(a) no other route is reasonably available to the applicant; and
(b) it is a matter of economic necessity and not mere convenience that the applicant use the way or bridge.

Even if the municipal officers or their duly authorized designee make the foregoing findings, they need not issue a permit if they determine the applicant’s use of the way or bridge could reasonably be expected to create or aggravate a safety hazard or cause substantial damage to a way or bridge maintained by the municipality. They may also limit the number of permits issued or outstanding as may, in their judgment, be necessary to preserve and protect the highways and bridges.
In determining whether to issue a permit, the municipal officers or their duly authorized designee shall consider the following factors:
(a) the gross registered weight of the vehicle;
(b) the current and anticipated condition of the way or bridge;
(c) the number and frequency of vehicle trips proposed;
(d) the cost and availability of materials and equipment for repairs;
(e) the extent of use by other exempt vehicles; and
(f) such other circumstances as may, in their judgment, be relevant.

The municipal officers or their duly authorized designee may issue permits subject to reasonable conditions, including but not limited to restrictions on the actual load weight and the number or frequency of vehicle trips, which shall be clearly noted on the permit.
Section 6. Administration and Enforcement
This Ordinance shall be administered and may be enforced by the municipal officers and their
duly authorized designees (i.e., Road Commissioner and law enforcement officers).

Section 7. Penalties
Any violation of this Ordinance shall be a civil infraction subject to a fine of not less than
$250.00 nor more than $1000.00. Each violation shall be deemed a separate offense. In addition
to any fine, the municipality may seek restitution for the cost of repairs to any damaged way or
bridge and reasonable attorney fees and costs. Prosecution shall be in the name of the
municipality and shall be brought in the Maine District Court.

Section 8. Amendments
This Ordinance may be amended by the municipal officers at any properly noticed meeting.

Section 9. Severability; Effective Date
In the event any portion of this Ordinance is declared invalid by a court of competent
jurisdiction, the remaining portions shall continue in full force and effect. This Ordinance shall
take effect immediately upon enactment by the municipal officers at any properly noticed
meeting.
Attachment A

Gross Vehicle Weight Allowances For
Exemption Certificate
(Weights are in Lbs.)

<table>
<thead>
<tr>
<th>TRUCK TYPE</th>
<th>TIRE WIDTHS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>9”</td>
</tr>
<tr>
<td>Single</td>
<td>24,200</td>
</tr>
<tr>
<td>Single</td>
<td>36,650</td>
</tr>
<tr>
<td>Single</td>
<td>41,325</td>
</tr>
<tr>
<td>Combination</td>
<td>37,225</td>
</tr>
<tr>
<td>Combination</td>
<td>45,250</td>
</tr>
<tr>
<td>Combination</td>
<td>46,875</td>
</tr>
<tr>
<td>Combination</td>
<td>58,375</td>
</tr>
<tr>
<td>Combination</td>
<td>65,250</td>
</tr>
</tbody>
</table>

GVW from chart: Empty weight: Payload:

Notes: (1) All axles must have four tires except for the steering axle

(2) The tire width used in the above table shall be the most common tire size on axles other than the steering axle. Tire widths shall be based on the manufacturer’s rating.
An application is hereby made to the Town of Harpswell for permission as provided by the “Ordinance Restricting Vehicle Weight on Posted Ways” to operate on a posted Town Way or Bridge in accordance with the following:

Vehicle Owner: ______________________________________________________

Address: _______________________________________________________________________

Telephone: __________ Fax No: _______________________________________________________________________

Type vehicle: __________

GVWR: __________

Destination of Vehicle: _______________________________________________________________________

Name of Posted Way(s): _______________________________________________________________________

Or] Entering Harpswell via: _______________________________________________________________________

Ending Location: _______________________________________________________________________

Est. total No. of Trips: __________ Max. No. of Trips/Day: __________

Date(s) for Permit: _______________________________________________________________________

Signature of Authorized Representative: _______________________________________________________________________

Print Representatives Name: _______________________________________________________________________

__________________________________________________________

(Below for Office Use Only)

Amount of Financial Security: __________ Date Paid: __________

☐ The above request is hereby approved subject to the following conditions:

________________________________________________________________________________________

________________________________________________________________________________________

☐ The above request is hereby denied for the following reasons:

________________________________________________________________________________________

________________________________________________________________________________________

Date: ______________________________________________________________________

Chair, Board of Selectmen, duly authorized
HARPSWELL ROAD ORDINANCE

Effective Dates

Harpwell Town Road Ordinance adopted March 10, 1984
Replaced by -
Harpwell Town Road Ordinance Adopted March 16, 1996
   Amended March 15, 1997
   Repealed and Replaced by -
   Harpwell Road Ordinance Adopted March 16, 2002
   Amended May 18, 2002
   Amended March 8, 2003
   Amended March 13, 2005
   Amended March 10, 2007
   Amended March 12, 2011
   Amended March 15, 2014
Contents

Contents ............................................................................................................................................. 2

Section 1. Purpose.......................................................................................................................... 3

Section 2. Authority, Applicability and Administration ............................................................. 3

Section 3. Definitions.................................................................................................................... 4

Section 4. Construction Standards for New Roads ................................................................. 5

Section 5. Road Names ............................................................................................................... 7

Section 6. Subdivision Roads ..................................................................................................... 7

Section 7. Notice of Permits ........................................................................................................ 8

Section 8. Enforcement and Appeals.......................................................................................... 8

THIS UNOFFICIAL TABLE OF CONTENTS IS NOT A PART OF THE ORDINANCE AND IS PROVIDED FOR CONVENIENCE ONLY.
Harpswell Road Ordinance

Section 1. Purpose

1.1 The purpose of the ordinance is to set construction standards for certain classes of roads, protect the safety and welfare of the citizens, provide for convenient travel, and minimize future maintenance costs.

Section 2. Authority, Applicability and Administration

2.1 This ordinance is adopted pursuant to home rule powers as provided for in article VIII, part 2 of Maine Constitution and 30-A Maine Revised Statues Annotated (M.R.S.A)

2.2 The ordinance is known as the Harpswell Road Ordinance and shall govern the construction of all collector roads, local roads, and driveways. All roads shall be constructed in accordance with this ordinance and Maine Department of Transportation (MDOT) standards. This ordinance repeals and replaces the Town Road Ordinance adopted March 16, 1996 and amended March 15, 1997.

Except as provided in Section 6 of this Ordinance or as may otherwise be required by law, roads in existence as of March 9, 2002 do not need to be upgraded for development.

2.3 Private roads may be proposed for acceptance at a Town meeting by a majority vote of the selectmen or by petition signed by a number of registered votes not less than 10% of votes cast in the town in the last gubernatorial election.

All roads to be presented for acceptance by the Town must meet the major local road standards and be paved, a minimum of 18 feet in width, with 2 1/2 inches of modified B binder hot bituminous concrete.

2.4 The Codes Enforcement Officer shall administer this ordinance.
Section 3. Definitions

**Driveway** - A private vehicular access way connecting a house, garage or other structure on a single lot to a road.

**Road** – any one of the following vehicular access ways:

**Arterial Road** - A road that is functionally classified by the Maine Department of Transportation as an arterial, with controlled access, traffic signals at important intersections and/or stop signs on side roads.

**Collector Road** - A road that is functionally classified as a collector by the Maine Department of Transportation, and that collects traffic from local roads and connects with arterial roads.

**Local Road** – A public road or private road, other than arterial or collector roads.

**Private Road** – A road that is privately owned, built, and maintained, but not including a driveway.

**Citizen’s Note:** The town may not, under Maine law, spend public funds to construct, repair, maintain or plow privately owned roads.

**Public Road** – A public easement or town way.

**Public Easement** - An easement held by the municipality for purposes of public access to land or water not otherwise connected to a public way, and includes the rights enjoyed by the public with respect to private ways created by statute prior to July 29, 1976, pursuant to 23 M.R.S.A. § 3012 (2).

**Town Way** - An area of land designated and held by a municipality for passage and use of the general public by motor vehicle; all town or county ways not discontinued or abandoned before July 29, 1976; and all state or state aid highways, or both, which are classified town ways as of July 1, 1982, or thereafter, pursuant to 23 M.R.S.A. § 53.
Section 4. Construction Standards for New Roads

4.1 Construction Standards for New Roads*

<table>
<thead>
<tr>
<th>TYPE OF ROAD</th>
<th>COLLECTOR ROAD</th>
<th>LOCAL ROAD serving 5 or more lots or dwelling units</th>
<th>LOCAL ROAD serving 3 or 4 lots or dwelling units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum Right of Way Width</td>
<td>50’</td>
<td>33’</td>
<td>33’</td>
</tr>
<tr>
<td>Minimum Traveled Way</td>
<td>22’</td>
<td>18’</td>
<td>16’</td>
</tr>
<tr>
<td>Minimum Shoulder Width</td>
<td>9’</td>
<td>3’</td>
<td>3’</td>
</tr>
<tr>
<td>Minimum Grade (may be increased up to 16% for a distance of 200’ or less)</td>
<td>0.5%</td>
<td>0.5%</td>
<td>n/a</td>
</tr>
<tr>
<td>Maximum Grade</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
</tr>
<tr>
<td>Minimum Radius of Center Line Curves</td>
<td>200’</td>
<td>150’</td>
<td>100’</td>
</tr>
<tr>
<td>Minimum Tangent Between Reverse Curves (May be waived by the Planning Board for extreme conditions within sub-divisions)</td>
<td>200’</td>
<td>100’</td>
<td>100’</td>
</tr>
<tr>
<td>Roadway Crown</td>
<td>¼”/”</td>
<td>¼”/”</td>
<td>¼”/”</td>
</tr>
<tr>
<td>Minimum Angle of Intersection</td>
<td>60°</td>
<td>60°</td>
<td>60°</td>
</tr>
<tr>
<td>Minimum Distance Between Intersections</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Same Side</td>
<td>400’</td>
<td>300’</td>
<td>300’</td>
</tr>
<tr>
<td>Opposite Side</td>
<td>250’</td>
<td>150’</td>
<td>150’</td>
</tr>
<tr>
<td>Maximum Grade within 50’ of Intersections</td>
<td>3%</td>
<td>3%</td>
<td>3%</td>
</tr>
<tr>
<td>Traveled Way Radii</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>90° Intersection</td>
<td>20’</td>
<td>15’</td>
<td>15’</td>
</tr>
<tr>
<td>60° to 90° Intersection</td>
<td>30’</td>
<td>30’</td>
<td>30’</td>
</tr>
<tr>
<td>90° to 120° Intersection</td>
<td>40’</td>
<td>30’</td>
<td>30’</td>
</tr>
<tr>
<td>Minimum Property Line Radii at Intersections</td>
<td>10’</td>
<td>10’</td>
<td>10’</td>
</tr>
<tr>
<td>Minimum Radii at Cul de Sac with Island</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Property Line</td>
<td>N/A</td>
<td>60’</td>
<td>50’</td>
</tr>
<tr>
<td>Outer Traveled Way or Pavement Edge</td>
<td>N/A</td>
<td>50’</td>
<td>40’</td>
</tr>
<tr>
<td>Inner Traveled Way or Pavement Edge</td>
<td>N/A</td>
<td>25’</td>
<td>20’</td>
</tr>
<tr>
<td>MDOT Approved Aggregate Sub–Base</td>
<td>12”</td>
<td>12”</td>
<td>12”</td>
</tr>
<tr>
<td>MDOT Approved Finish Gravel</td>
<td>6”</td>
<td>6”</td>
<td>6”</td>
</tr>
</tbody>
</table>

* Subdivisions are required to build a road according to the number of lots served.
Note 1: The Planning Board may approve a new local road in a Flexible Lot Size Subdivision that has a radius of not less than fifty (50) feet and/or that has right-angle L-turns, subject to the approval of the appropriate Fire Chief, in order to encourage slow speed vehicular movement within the subdivision.

4.2 Other Requirements: In addition to the above requirements, the following requirements shall also be met:

4.2.2 The area to be used for the traveled portion of roads, including shoulders and side slopes must be cleared, grubbed and excavated to a depth of at least twelve (12) inches.

4.2.3 Where adequate drainage can not be obtained using twelve (12) inches of sub-base material, the road must be completed using designs consistent with the engineering standards approved by the Codes Enforcement Officer.

4.2.4 Where new pavement joins existing pavement, the existing pavement shall be cut along a straight line or series of straight lines and shall form a neat, even vertical joint.

4.2.5 Curbing may be required when it is necessary, as determined by the Codes Enforcement Officer, for pedestrian or vehicle safety, storm water control, or to minimize long-term maintenance costs for the Town.

4.2.6 Unless otherwise approved by the Codes Enforcement Officer all roads shall have side slopes shall be no steeper than 3:1. Back slopes shall not exceed 3:1, except that for stream and/or wetland crossings may have a slope of up to 1.5 to 1 in accordance with Department of Environment Protection (MDEP) standards. In ledge cuts, back slopes may be as steep as 1:10, with the approval of the Codes Enforcement Officer. Side slopes and back slopes shall be graded, loamed, fertilized and seeded, following recommendations in the latest edition of the MAINE ENVIRONMENTAL QUALITY HANDBOOK prepared by the Maine Soil and Water Conservation Commission.

4.2.7 Guard Rails may be required when slopes exceed 2:1 as determined by the Codes Enforcement Officer, for pedestrian or vehicle safety. Guard Rails may be constructed out of any material MDOT approved, including but not limited to wood.

4.2.8 Shoulders shall be measured from the edge of the traveled way to the bottom of the drainage ditch.

4.2.9 Erosion control measures for all roads must meet MDEP standards.

4.2.10 No new stone walls, retaining walls, or solid fences shall be constructed within 8’ of the edge of the pavement of any traveled way maintained by the Town;
provided, however, that no such walls or fences shall be located within the right of way of a State road or a public road.

Section 5. Road Names

5.1 All roads shall be named by the Town in accordance with the Harpswell Enhanced 911 Ordinance and any subsequent ordinances related to it.

5.2 Only town approved roads signs may be used at the intersection of any roads. These sign must be compliant with the Harpswell Enhanced 911 Ordinance and approved by the Board of Selectmen before installation.

Section 6. Subdivision Roads

6.1 Individual lots within subdivisions shall have no more than one two-way access driveway per one hundred fifty (150) feet of frontage and no more than two access driveways per lot.

6.2 Subdivisions with roads connecting directly to State arterial roads shall obtain entrance permits from Maine DOT. Final approval of a subdivision shall not be granted until entrance permits are obtained and a copy submitted to the Planning Board.

6.3 New subdivisions connecting directly to existing private road(s), must upgrade the existing private road(s) to the local road standards, from the point of entrance from a public road onto the existing private road to the point of intersection with the new private road. Where the right-of-way of the existing road is less than thirty three (33) feet, the applicant may request, and the Planning Board may grant, a waiver of the right-of-way requirement as long as all other construction standards are met.

6.4 New subdivisions connecting directly to existing public road(s) must upgrade the public road(s) to the applicable road construction standards if it is determined by the Planning Board that the subdivision will have a detrimental effect on the condition of the public road(s), the level of service at nearby intersections impacted by the subdivision and the carrying capacity of existing public road(s).

6.5 Cul-de-sacs and dead end roads that provide the sole vehicular access to improved or improvable land in the subdivision shall be provided with a suitable turning circle or turnaround, as applicable, at the closed end.

6.5.1 A hammerhead turnaround, whether temporary or permanent, shall be constructed to specified road standards for a distance of fifty (50) feet and shall be located at a ninety degree (90°) angle to the road it serves.

6.5.2 A T-shaped turnaround, whether temporary or permanent, shall be constructed to specified road standards for whatever minimum distance is necessary for each lot that it serves to meet frontage requirements.
6.5.3 All turning circles shall be constructed to the standards set forth in Section 4 of this Ordinance.

6.5.4 Temporary turning circles may be allowed where future road extensions are planned, provided that all lots are designed to provide the required frontage along the road extension after the removal of the turning circle.

Section 7. Notice of Permits

7.1 Copies of any MDEP applications and permits for stream or wetland crossings must be provided to the Codes Enforcement Office before construction of any road or driveway.

7.2 A road or driveway connecting to an arterial or collector road must obtain entrance permits from MDOT. A copy of the application must be submitted to the Codes Enforcement Officer before construction may begin.

Section 8. Enforcement and Appeals

8.1 This ordinance shall be enforced in accordance with the enforcement provisions of the Town’s Basic Land Use Ordinance.

8.2 Any person aggrieved by a decision of the Code Enforcement Officer may appeal such a decision to the Board of Appeals in accordance with the appeal provisions in the Basic Land Use Ordinance.
ROBINHOOD ROAD PARKING ORDINANCE

I. AUTHORITY. This parking ordinance is adopted pursuant to 30-A M.R.S.A. § 3009(C).

II. PURPOSE. This Ordinance is intended to protect public health, safety and welfare by regulating the parking of motor vehicles on Robinhood Road. Unrestricted parking of motor vehicles on the Town road creates traffic congestion, prevents the passage of emergency equipment, impedes winter maintenance and is dangerous to pedestrians and motorists. The purpose of this Ordinance is to reduce these dangers and to regulate parking as necessary to protect public health, safety and welfare.

III. DEFINITIONS. As used in this Ordinance, the following words and phrases shall have the meanings ascribed to them in this section.

Motor vehicle shall be defined as set forth in 29-A M.R.S.A. § 101(42), as may be amended from time to time.

Night, weekend or holiday release hours means weekdays between the hours of 5:00 pm and 7:00 am, Saturdays, Sundays or holidays.

Storage and release facility means the real property and any structures thereon to which Tow Operators tow or transport motor vehicles for storage until the vehicle owner claims the vehicle.

Towing List means a list maintained by the Town Administrator containing the names of those tow operators approved by the Town Administrator to respond to requests for the towing of motor vehicles made by those persons authorized to enforce this Ordinance.

Tow Operator means a person engaged in the business of, or offering the services of, a wrecker vehicle or towing service, whereby motor vehicles are or may be towed or otherwise removed from one place to another by the use of a motor vehicle adapted to and designed for that purpose.

Wrecker vehicle means a motor vehicle intended to be used to tow or otherwise transport other motor vehicles.

IV. REGULATED AREA. When signs are erected giving notice that parking is prohibited and violators will be towed, no person shall park any motor vehicle in regulated areas on Robinhood Road at any time. From Harpswell Islands Road (Route 24), the regulated areas of Robinhood Road are the north (left) side of Robinhood Road for its entire distance and the south (right) side of Robinhood Road for the first 445 feet.
more or less from its intersection with Route 24, and also 625 feet more or less from same intersection continuing for 229 feet more or less and also 1014 feet more or less from same intersection to the end of the Town-maintained way. No vehicle shall be parked in a regulated area such that it prevents or obstructs passage of emergency services vehicles.

V. AUTHORITY TO TOW AND IMPOUND. Any illegally parked motor vehicle on Robinhood Road may be towed. Those persons authorized to enforce this Ordinance are authorized to order the removal and impounding of any motor vehicle parked on Robinhood Road in violation of this Ordinance by a Tow Operator on the Towing List.

VI. TOWING LIST. The Town Administrator is authorized to approve Tow Operators who meet the objective standards set forth in Sections VII, VIII and IX herein to be listed on the Towing List. The Town Administrator shall remove Tow Operators who fail, on a single incident basis and/or a continuing basis, to meet the objective standards set forth in Sections VII, VIII and IX herein from the Towing List. Notice of any changes to the Towing List shall be provided to the affected Tow Operator(s) and those persons authorized to enforce this Ordinance.

VII. APPROVED STORAGE AND RELEASE FACILITIES. Every Tow Operator on the Towing List shall provide and maintain a single storage and release facility for the storage of at least five (5) full sized automobiles and a building capable of housing and securing at least one (1) other motor vehicle. Such facilities shall be within the limits of the Town of Harpswell. All motor vehicles towed under the provisions of this Agreement shall be stored within Town limits, upon or within the storage and release facility maintained by each Tow Operator.

VIII. TOW OPERATOR INSURANCE AND INDEMNIFICATION REQUIREMENTS.

(a) Every Tow Operator on the Towing List shall maintain, at its own expense, and provide a copy to the Town, such policies of insurance as follows:

(1) Garagekeeper’s legal liability policy covering the storage and release facility, including fire, theft, windstorm, vandalism and explosion, in the amount of at least Twenty Five Thousand Dollars ($25,000.00), with each motor vehicle suffering damage or loss being deemed a separate claim.

(2) Towing/wrecker service commercial liability policy covering the operation of the Tow Operator’s business, equipment or other motor vehicles for any bodily injury or property damage. This policy shall be in the minimum amount of Four Hundred Thousand Dollars ($400,000.00) combined single limit for personal injury and property damage, or such other amount as may be required by the
Maine Tort Claims Act (14 M.R.S.A. § 8001 et seq.), as amended from time to time, whichever amount shall be greater. Each wrecker vehicle insured shall be identified by make, model and vehicle identification number (VIN).

(3) Road service liability coverage for the lifting, hoisting and towing of motor vehicles must be included in the Tow Operator’s garagekeeper’s legal liability policy.

(b) Each policy required above shall name the Town as an additional insured and the certificate evidencing the same shall be in a form satisfactory to the Town Administrator. The Tow Operator shall maintain such insurance at all times it is on the Towing List, and the Tow Operator shall provide the Town Administrator with not less than thirty (30) days’ advance written notice of the cancellation, expiration or non-renewal of said insurance.

(c) The lapsing or cancellation of any policy as required hereinabove shall result in the immediate removal of the Tow Operator from the Towing List without any action on the part of the Town.

(d) Tow Operators shall defend, indemnify and hold the Town harmless from all claims for damages to property and injuries to persons resulting from the Tow Operator’s negligence or intentional misconduct in the towing or storage of vehicles pursuant hereto.

IX. TOW OPERATOR SERVICE CHARGES. The maximum rates for services performed by Tow Operators on the Towing List pursuant to this Ordinance shall be as follows:

(a) Tows: $85.00 per tow.

(b) Storage fee: $30.00 per day, which begin to accrue 24 hrs. after the vehicle is towed.

(c) Vehicle release fee: When an owner requests release of the vehicle during night, weekend or holiday release hours as defined herein, an additional charge of $25.00 may be assessed. If a vehicle is released outside of night, weekend or holiday release hours as defined herein, no charge shall be assessed for the release.

(d) Minimal call out fee: In the event that a Tow Operator has been requested to perform service and, upon arrival at the scene, the situation has changed and towing services are no longer required, $15.00 fee if call out is outside of night, weekend or holiday release hours as defined herein and $20.00 fee if call
out is during night, weekend or holiday release hours as defined herein.

X. NOTIFICATION TO OWNERS. Within 24 hours from the time of the removal of any motor vehicle under authority granted by this Ordinance, notice of the fact that the motor vehicle has been impounded shall be sent by a person authorized to enforce this Ordinance to the owner of record of that motor vehicle. Such notice shall be sent by regular first-class mail and shall contain the following information:

(a) registration number and a brief description of the motor vehicle;
(b) name and address of person or company who performed the tow;
(c) location from which the motor vehicle was removed;
(d) location where the motor vehicle is stored and may be claimed;
(e) the provisions of the Ordinance that were violated and led to the tow; and
(f) the maximum towing, storage and release fees pursuant to this Ordinance.

Any person seeking release of a motor vehicle towed pursuant to this Ordinance must first (a) pay all towing, storage and release fees; and (b) present satisfactory evidence of his or her right to possession and sign a receipt for the motor vehicle.

If any motor vehicle has not been claimed, the Tow Operator shall comply with the procedures set forth in 29-A M.R.S.A. §§ 1851-1861, Abandoned Vehicles, as may be amended from time to time. In the event of an unclaimed or abandoned vehicle, the Town Operator’s sole remedy shall be as outlined in said State statute.

XI. RECORDS OF MOTOR VEHICLES TOWED. The Town’s duly authorized law enforcement provider shall keep a record of all motor vehicles towed and impounded and shall be able at all reasonable times to furnish the owners or agents of the owners thereof with information as to the place of storage of such motor vehicles.

XII. LIABILITY FOR FINE OR PENALTY. The payment of towing, storage and release fees to the Tow Operator shall not operate to relieve the owner or operator of any motor vehicle from liability for any fine or penalty for the violation of any law or ordinance on account of which the motor vehicle was towed and impounded.

XIII. UNLAWFUL REDEMPTION. No person shall move a motor vehicle after it has been towed to an approved storage and release facility without payment of all applicable towing, storage and release fees.

XIV. FINES AND PENALTIES. A violation of this Ordinance is a civil violation punishable by a fine of Fifty Dollars ($50.00). Any person charged with a violation of this Ordinance may waive court action by paying a waiver fee of Twenty Five Dollars ($25.00) to the Town Clerk within 14 days of the violation. All fines and waiver fees shall accrue to the benefit of the Town. Whoever moves a motor vehicle after it has been
towed to an approved storage and release facility without payment of the towing, storage
and release fees shall be subject to a fine of One Hundred Dollars ($100.00) for the first
offense and Two Hundred Dollars ($200.00) for each subsequent offense.

XV. ENFORCEMENT. This Ordinance may be enforced by the Town’s duly
authorized law enforcement provider (currently Cumberland County Sheriff’s
Department), a constable of the Town of Harpswell, and any person specifically
authorized by formal vote of the Board of Selectmen to enforce this Ordinance.

XVI. SEVERABILITY. In the event that any portion of this Ordinance is found by a
court of competent jurisdiction to be invalid, the remaining provisions shall continue in
full force and effect.

XVII. REPEAL OF PRIOR ORDINANCE. Upon adoption of this Ordinance, any
prior Robinhood Road parking ordinance is repealed.

XVIII. EFFECTIVE DATE. This Ordinance shall become effective when adopted by
a majority of the Board of Selectmen.

Adopted July 17, 2003

Revised May 29, 2014

Revised June 19, 2014
HARPSWELL SHELLFISH ORDINANCE

ADOPTED DECEMBER 2, 1981 ARTICLE # 9
AMENDED MARCH 5, 1983 ARTICLE #29
RE-ENACTED & AMENDED MARCH 10, 1984 ARTICLE #40
AMENDED MARCH 16, 1985 ARTICLE #29
AMENDED MARCH 15, 1986 ARTICLE #39
RE-ENACTED & AMENDED MARCH 28, 1987 ARTICLE #36
AMENDED MARCH 19, 1988 ARTICLE #25
AMENDED MARCH 18, 1989 ARTICLE #54
RE-ENACTED & AMENDED MARCH 10, 1990 ARTICLE #39
RE-ENACTED & AMENDED MARCH 9, 1991 ARTICLE #35
RE-ENACTED & AMENDED MARCH 13, 1993 ARTICLE #35
RE-ENACTED & AMENDED MARCH 12, 1994 ARTICLE #44
AMENDED JUNE 10, 1994 ARTICLE # 5
AMENDED MARCH 11, 1995 ARTICLE #50
RE-ENACTED & AMENDED MARCH 26, 1996 ARTICLE # 3
AMENDED MARCH 15, 1997 ARTICLE #33
AMENDED MARCH 14, 1998 ARTICLE #13
RE-ENACTED & AMENDED MARCH 6, 1999 ARTICLE #18
AMENDED OCTOBER 23, 1999 ARTICLE # 5
AMENDED MARCH 11, 2000 ARTICLE #17,18 & 19
AMENDED MARCH 10, 2001 ARTICLE #50
RE-ENACTED & AMENDED MARCH 9, 2002 ARTICLE #55
AMENDED NOVEMBER 23, 2002 ARTICLE # 8
AMENDED MARCH 8, 2003 ARTICLE #70
AMENDED MARCH 13, 2005 ARTICLE #20
AMENDED MARCH 10, 2007 ARTICLE #30
AMENDED MARCH 14, 2009 ARTICLE #7
AMENDED MARCH 20, 2010 ARTICLE #5
AMENDED MARCH 10, 2012 ARTICLE #7
AMENDED MARCH 9, 2013 ARTICLE #8
AMENDED MARCH 14, 2015 ARTICLE #13
AMENDED MARCH 11, 2017 ARTICLE #11
CHAPTER 1. AUTHORITY, TITLE PURPOSE AND DEFINITIONS

Sec. 101 Authority
This Ordinance is enacted in accordance with 12 M.R.S.A. § 6671, as may be amended from time to time. The title of this Ordinance is the Harpswell Shellfish Ordinance.

Sec. 102 Purpose
The purpose of this Ordinance is as follows:
  102.1 To regulate the harvesting of shellfish in the Town of Harpswell.
  102.2 To provide management programs in Harpswell for the conservation of shellfish in a manner consistent with the production of a reasonable yield to shellfish harvesters.

Sec. 103 Conservation and Management of Shellfish Resources
It is hereby determined as follows:
  103.1 The clam flats of the Town are a very valuable shellfish resource which is important to the local economy.
  103.2 These flats are not an inexhaustible resource, and therefore, they must be prudently managed in order to remain viable.
  103.3 As part of the management process it is deemed vitally necessary to restrict the taking of shellfish by limiting shellfish licenses; restrict the size and quantity of shellfish which may be harvested; and, take the other measures outlined in the Ordinance.

Sec. 104 Definitions
  104.1 “Clam flats” mean the area between high and low water.
  104.2 “Harvest” means to dig or take by hand implements only.
  104.3 The term “resident” refers to a person who has physically resided at a fixed, permanent and principal home in the town for at least six months next prior to the date of application for a license under this Ordinance and for the duration of the license period or, in the case of student, to a student living temporarily outside of Harpswell while enrolled in a College, university or post-secondary school, provided such student maintains his/her fixed permanent principal home in Harpswell.
  104.4 “Non-resident” means a person who does not qualify as a resident.
  104.5 “Shellfish” means soft shell clams (Mya arenaria), quahogs (Mercenaria mercenaria), American oysters (Crassostrea virginica), European oysters (Ostrea edulis), and razor clams (Ensis directus).
  104.6 “Municipal Shellfish Conservation Warden” means the law enforcement officer appointed by the Board of Selectmen to enforce this Ordinance.
  104.7 “Lot” means the total number of soft shell clams in any bulk pile. Where soft shell clams are in a box, barrel or other container, the contents of each box, barrel, or other container constitutes a separate lot.
  104.8 “Possession” means to have in one’s custody or control, either personally or by another who is under one’s control.
“Conservation License Fee Reduction” means a license fee reduction that a commercial license holder or applicant may qualify for by reporting for and completing three (3) hours of Conservation Time during three scheduled tide cycles per calendar year. (i.e., nine (9) hours per calendar year).

“Conservation Time” means projects approved by the Marine Resources Committee from time to time that serve to preserve and protect the Town’s clam flats for the purpose of taking, propagating, harvesting, or cultivating shellfish therefrom.

“Personal Use” means for consumption or use by oneself, by members of the immediate family or by invited guests.

“Suspension” means the temporary withdrawal of a license or privilege to obtain a license through the Harpswell Town Office.

“Adjudication” means formal, final pronouncement of a judgment in a court or administrative proceeding.

“Student” means an individual actively enrolled in school or who is receiving approved home instruction, who is at least ten (10) years of age but less than twenty (20) years of age as of the date of license application, and who continues to be actively enrolled in school or receiving approved home instruction to maintain his/her student status. Student status shall terminate upon the earlier of the individual’s graduating from high school; the individual’s dropping out of school or discontinuance of home instruction; or the individual’s reaching his/her twentieth (20th) birthday.

“Period of Issuance” means the first ninety (90) days during which the Town issues shellfish harvest licenses each calendar year.

CHAPTER 2. MARINE RESOURCES COMMITTEE

Sec. 201 Marine Resources Committee
There is hereby established a Marine Resources Committee consisting of seven (7) members and two alternate members to be appointed by the Board of Selectmen. At least four (4) of the Committee members shall be holders of Town-issued commercial shellfish licenses. The alternate members shall be available to fill a vacancy and vote when necessary to meet the quorum requirement of 4 members present and voting. Each Committee member shall have been a resident of the Town for at least three years immediately preceding his/her appointment and shall continue as a resident during his/her term. The term of office of the members of the Committee shall be for three years and shall terminate on April 30 of the applicable year; three shall be for a term of three years, two shall be for a term of two years and two shall be for a term of one year. Any Committee member with three consecutive unexcused absences from the regularly scheduled meetings may be replaced by the Board of Selectmen. Upon conviction for violation of any sections of the Harpswell Shellfish Ordinance, a standing member of the Committee will be subject to censure, suspension or any other lawful penalty determined to be appropriate by the Board of Selectmen. The Board of Selectmen shall appoint a person to fill a vacancy for the unexpired term. The Committee shall choose a Chairman, Vice Chairman, and Secretary. The Chairman shall preside at all meetings of the Committee. The Vice Chairman shall preside in the Chairman’s absence; and the Secretary shall record and keep
minutes of each meeting. A copy of the minutes of each meeting shall be submitted to the Town Clerk or his/her designee as soon as they are approved by the Committee.

Sec. 202 Powers and Duties of Committee
The Marine Resources Committee has the following powers and duties.

202.1 To administer and coordinate the shellfish conservation programs and any other duties required under this Ordinance.

202.2 To recommend to the Board of Selectmen how the money appropriated for shellfish conservation programs should be spent.

202.3 To administer and coordinate a survey of all clam flats to obtain and maintain current information on shellfish resources, including:

202.3.1 The determination of size frequency.

202.3.2 The determination of growth rate.

202.3.3 The estimation of the available standing crop.

202.3.4 The estimation of the potential yield.

202.3.5 The identification of sources of harmful pollution.

202.3.6 The identification of other resource problems, such as green crab predation and mussel competition.

202.3.7 To determine the current level of use of the shellfish resources.

202.3.8 To conduct a conservation program for Licenses as follows:

202.3.8.1 The Marine Resources Committee shall, no less than annually, identify and approve those projects that will qualify as Conservation Time. Such list of Conservation Time shall be completed by the Marine Resources Committee and forwarded to the Town Clerk on or before January 15 of each year. The Marine Resources Committee shall, no less than annually, develop and approve a list of conservation dates and hours during which diggers can qualify for their Conservation License Fee Reduction. Such list of conservation dates shall be completed by the Marine Resources Committee and forwarded to the Town Clerk on or before January 15 of each year. Existing Harpswell commercial license holders and all applicants for a commercial license, exclusive of student license holders, may sign up for three (3) conservation dates only. Effective April 1 of the following year, holders of Harpswell commercial licenses and all applicants for a commercial license, exclusive of student licenses, will be eligible to qualify for a Conservation License Fee Reduction as established by the Board of Selectmen pursuant to Section 302. Conservation Time performed by a license holder or applicant is eligible for qualification for the Conservation License Fee Reduction only until the award or renewal of the next commercial license. A maximum of twenty-five (25) people will be allowed to participate in each conservation date. The Conservation Time requirements to qualify for a Conservation License Fee Reduction for licensees age seventy (70) and over is waived if
the licensee has held a Town-issued commercial shellfish license for at least the previous two (2) years.

202.3.8.2 At least one (1) member of the Marine Resources Committee or a qualified person designated by the Committee and approved by the Selectmen shall be present during each Conservation Time period and shall determine that each digger’s requirements to qualify for a Conservation License Fee Reduction has been fulfilled.

202.3.8.3 The Marine Resources Committee shall maintain records of compliance with this program for each conservation date. The Committee member or his/her designee who leads the conservation activity shall fill out a 3-part receipt for each participant. A receipt shall be considered valid only if it contains the following items: the name of the participant; the date and time of the conservation activity; the type and location of the conservation activity; the legible signature of the issuing official; and the serial number preprinted on each part of the 3-part receipt. The Shellfish Conservation Warden shall be present for all conservation dates and shall be responsible for managing the attendance sheet and overseeing the distribution of each part of the 3-part receipt booklet. One part of the receipt shall be issued to the conservation participant; one part of the receipt shall be retained by the Shellfish Conservation Warden and filed with the Town Clerk’s Office within two (2) weeks following the conservation date; and one part of the receipt shall be filed by the issuing Committee member or his/her designee with the permanent records of the Marine Resources Committee. Credit toward the fee for a commercial license is contingent upon satisfaction of the requirements for the Conservation License Fee Reduction prior to October 1 of the preceding year. The Marine Resources Committee is responsible for compiling and forwarding to the Town Clerk’s Office an annual listing of all Conservation Time performed each calendar year on or before January 15 of the following year in preparation for the annual licensing process.

202.3.8.4 It shall be the responsibility of the Commercial Licensee to sign up for Conservation Time. Any person signing up must hold either a Harpswell Resident or Non-resident Commercial Shellfish License unless an unlicensed person wishes to voluntarily donate time which may enhance his/her chance of obtaining a Commercial License. The list will be available at the Town Clerk’s Office during regular office hours. Pursuant to Section 202.3.8.1 above, said list shall be available by January 15 of each year.

202.3.8.5 The Marine Resources Committee may waive all or part of the requirements for a Conservation License Fee Reduction for an
existing Harpswell license holder who provides the Committee with a written statement from a physician indicating that the existing license holder was not able to participate in any regularly scheduled Conservation Time due to incapacitation by illness or injury; provided, however, that any waiver granted by the Committee shall not preclude the Committee from allowing the existing license holder to perform alternate, less strenuous work. At the request of an existing license holder, made at a regularly monthly meeting of the Committee, the Committee may arrange on an hour-for-hour basis:

(a) Another time to complete qualifying conservation work for an existing license holder who demonstrates to the Committee that the illness or incapacitation of a parent, spouse or child prevented that person from participating in regularly scheduled Conservation Time; or

(b) Alternate less strenuous work for an existing license holder who provides the Committee with a written statement from a physician indicating that the existing license holder is not physically able to participate in regular conservation work.

202.4 To cooperate with the Department of Marine Resources in carrying on experimental shellfish programs.

202.5 To prepare and promulgate a shellfish conservation plan in cooperation with the Department of Marine Resources based on the results of the clam flat survey, incorporating recommended levels of harvesting on the various flats as delineated on maps prepared by the Committee consisting of area rotation, seeding, predator control, and the opening and closing of clam flats.

202.6 To collect harvest data documenting local values of shellfish resources.

202.7 To make an annual written report to the Town and Department of Marine Resources detailing funds available, expenditures made, harvest date results of all conservation and experimental programs, enforcement activities, and sources of pollution, predation, competition and other resource problems.

Sec. 203 Opening and Closing Clam Flats
The Board of Selectmen with the approval of the Commissioner of Marine Resources has the power to open and close clam flats. When information in the possession of the Marine Resources Committee indicated that a clam flat should be opened or closed, it shall immediately advise the Board of Selectmen. The Board of Selectmen shall call a public hearing on ten-days notice published in a newspaper having general circulation in the Town, stating the time, place, and subject matter of the hearing; and shall send a copy of the notice to the Department of Marine Resources. At the hearing, the Committee shall present evidence obtained from its surveys and other sources, and members of the public may present evidence in support or refutation of the evidence presented by the Committee.
After the hearing is closed, the Board of Selectmen shall make findings of fact on the relevant evidence presented. The Board of Selectmen shall then make a conclusion based on those findings of fact as to whether opening the flat as requested is warranted by the recovery of the resource; or the freedom from predation, competition, or other resource problem.

If so, the Board of Selectmen shall order the flat opened and shall set such time limitations and other harvesting conditions as are consistent with good conservation practice, contingent upon approval from the Department of Marine Resources (DMR). If the request is to close the flat, the Board of Selectmen shall make a conclusion based on its findings of fact as to whether closing the flat is warranted by depletion of the shellfish; destruction of existing seed; or predation, competition, or other resource problem. If so, the Board of Selectmen, with the approval of the DMR area biologist, shall order the flat closed until further request for opening by the Committee. Any proposal for opening or closing the flats shall be approved by the Commissioner of Marine Resources prior to enactment.

CHAPTER 3. LICENSES AND FEES

Sec. 301 Licenses Defined

The types of licenses are as follows:

301.1 **Resident Commercial Shellfish License.** This license entitles the Licensee to harvest any amount of shellfish from the tidal waters or clam flats of the Town where and when it is otherwise lawful to do so. This license may be a renewal or a non-renewal license pursuant to Section 304.5 or 304.6.

301.2 **Non-resident Commercial Shellfish License.** This license entitles the Licensee to harvest any amount of shellfish from the tidal waters or clam flats of the Town where and when it is otherwise lawful to do. Ten percent of the number of resident commercial shellfish licenses shall be reserved for non-resident commercial shellfish licenses. This license may be a renewal or a non-renewal license pursuant to Section 304.5 or 304.6.

301.3 **Resident Recreational Shellfish License.** This license is available to residents of the Town and real estate owners within the Town and entitles the holder to dig, take and possess no more than one peck of soft-shell clams or one peck of quahogs or one peck of a combination of shellfish per day for personal use. This license is not available to, or valid for, holders of a State of Maine Shellfish License. Use of the recreational license for the purposes of selling, trading or bartering is a violation of this Ordinance.

301.4 **Non-resident Recreational License.** This license is available to non-residents and entitles the holder to dig, take and possess no more than one peck of shellfish per day for personal use. This license is not available to, or valid for, holders of a State of Maine Shellfish License. Use of the recreational shellfish license for the purposes of selling, trading or bartering is a violation of this Ordinance. Ten percent of the number of resident recreational shellfish licenses issued shall be reserved for non-resident recreational shellfish licenses.
301.4.1 Waiting List: A waiting list for non-resident recreational license applicants shall be maintained by the Town Clerk. Any prospective applicants for non-resident recreational shellfish licenses who wish to have their names placed on the waiting list must, beginning on March 15 of each year, report to the Town Clerk’s Office, in person, to have their name placed on the waiting list. Proof of identification and place of residence, to the satisfaction of the Town Clerk, shall be provided by the applicant. Each name on the waiting list shall be assigned a separate number. Licensees will be selected by a lottery conducted by the Town Clerk’s Office beginning on April 1 of each year and repeated throughout the license year as non-resident recreational licenses become available. The lottery shall be conducted by placing all of the numbers corresponding to the names of applicants on the waiting list into a bin or hat and by then drawing a number from the bin or hat. Once a new licensee’s name is selected, that applicant will be contacted by the Town Clerk’s Office to pick up his/her license. The Town Clerk shall maintain a record of the date and time of actual or attempted contact with the selected applicant. If the applicant does not pick up his/her new license within 72 hours of the date and time of the earliest actual or attempted contact by the Town Clerk’s Office, the same system shall be employed to draw another number from the lot and the same practice repeated to keep the number of non-resident recreational licenses equal to 10% of the number of resident recreational licenses.

301.5 Lifetime Recreational License. Any Harpswell Resident or Harpswell real estate owner who is age 65 or older may be issued a one-time license for the lifetime of the licensee. A licensee under this section is entitled to dig, take, and possess no more than one peck of shellfish per day for personal use.

301.6 Resident Student Commercial Shellfish License. This license is available to a resident student and entitles the holder to harvest no more than one (1) bushel of shellfish per day from the tidal waters or clam flats of the Town when and where it is lawful to do so.

301.7 Non-resident Student Commercial Shellfish License. This license is available to a non-resident student and entitles the holder to harvest no more than one (1) bushel of shellfish per day from the tidal waters or clam flats of the Town when and where it is lawful to do so. Ten percent of the number of resident student commercial shellfish licenses shall be reserved for non-resident student commercial shellfish licenses.

Sec. 302 Fees
Except as expressly provided in this section, no license fees shall be pro-rated for a portion of a license year. All license fees are non-refundable. The Board of Selectmen may establish from time to time a Conservation License Fee Reduction for fees imposed under this section. A non-refundable fee, in such amount as may be established by the Board of Selectmen from time to time, shall be charged for the following license categories:

302.1 Resident Commercial Shellfish License. License fee is not refundable even if proven a non-resident. For residents 65 years or older who have such a
license for at least the previous year, the license fee shall be half the regular fee.

302.2 **Non-resident Commercial Shellfish License.** For non-residents 65 years or older who have such a license for at least the previous year, the license fee shall be half the regular fee.

302.3 **Resident Recreational Shellfish License** (License fees will be waived for residents 65 years or older for this category.)

302.4 **Non-resident Recreational Shellfish License.** Shall be the maximum fee allowed by the State; if none, then the fee shall be twice the fee for a Resident Recreational Shellfish License (except that license fees for ten percent of the number of resident recreational shellfish licenses issued to residents 65 years or older will be waived for non-residents 65 years or older for this category).

302.5 **Resident Student Commercial Shellfish License.** License fee is not refundable even if the student is proven to be a non-resident.

302.6 **Non-resident Student Commercial Shellfish License.**

Sec. 303 **License Expiration Date**
All licenses expire at midnight March 31. Exceptions: Resident Recreational Age 65 or older lifetime licenses are valid for the lifetime of the licensee and Student Commercial Licenses expire as set forth in Section 304.7.

Sec. 304 **Qualifications of License**

304.1 An applicant for a Resident Commercial Shellfish License or a Student Commercial License must be a resident of the Town of Harpswell as defined in Section 104.3 and whose prior shellfish license is not currently under suspension pursuant to this Ordinance.

304.2 An applicant for a Non-resident Commercial Shellfish License or a Student Commercial License is any person who does not meet the residency requirements in Section 104.3 and whose prior shellfish license is not currently under suspension pursuant to this Ordinance.

304.3 An applicant for a Resident Recreational Shellfish License must be either a resident as defined in Section 104.3 or the owner of real estate within the Town of Harpswell and whose prior shellfish license is not currently under suspension pursuant to this Ordinance.

304.4 The place of residence of a licensed applicant as stated on any other license is not determinative of the applicant’s true place of residence. Before issuance of the license, the applicant shall be required to produce three proofs of his/her residence of the types outlined in Title 21-A M.R.S.A. Section 112 with the applicant’s name and physical address clearly stated or written evidence satisfactory to the Shellfish Conservation Warden before issuance of the license.

304.5 **Commercial Renewal License Criteria**
Once received by the Town Clerk and no later than March 1 of each year, all applications for Resident Commercial Renewal Shellfish licenses and Non-resident Commercial Renewal Shellfish licenses shall be separated.
Applicants for renewal licenses must have been licensed in the Town of Harpswell for the previous year, and must have submitted an application form and paid any applicable fees by March 1 pursuant to Section 305. Commencing April 2, 2013 and thereafter, applicants for renewal licenses must have attended two Marine Resources Committee meetings in the previous 12-month period prior to renewal; provided, however that attendance credit will be granted to a harvester in the event the harvester attends a meeting at which there fails to be a quorum of the Committee present. Attendance sheets, signed by attendees, must be provided by the Marine Resources Committee to the Town Clerk’s Office on a monthly basis. An applicant who has failed to qualify as a resident in the preceding year is not eligible for a Resident Commercial renewal license. Reciprocal licenses from previous years do not qualify as commercial renewal licenses. Renewal licenses will be available during the last five (5) working days of March and will be limited to the number of licenses to be issued that year. In case the number of applicants exceeds the number of licenses available, a seniority system based on the date of first licensure by the Town shall be employed in order to eliminate the most recently issued licenses until the required number of licenses is achieved. If multiple licenses have the same date of first licensure by the Town, a lottery shall be conducted by the Town Clerk to choose by lot only those few licenses that shall be eliminated. Nothing in Section 304.5 shall be interpreted to increase the available number of Non-resident Commercial licenses to more than ten percent of the available number of Resident Commercial licenses.

304.6 Commercial Non-Renewal License Criteria

Any license holder who does not fulfill all criteria set forth in Section 304.5 does not qualify for a renewal license. Commercial non-renewal licenses shall be issued pursuant to the following ordered priorities:

304.6.1 Any remaining commercial licenses available after the completion of the renewal process set forth in Section 304.5 will first be issued to an applicant who has held a valid Harpswell Commercial license for at least the previous year, who has satisfied the requirements for a Conservation License Fee Reduction but who submitted the application form after March 1 but before the last business day of March. In case the number of such applicants exceeds the number of licenses available, a seniority system based on the date of first licensure by the Town shall be employed in order to eliminate the most recently issued licenses until the required number of licenses is achieved. If multiple licenses have the same date of first licensure by the Town, a lottery shall be conducted by the Town Clerk to choose by lot only those few licenses that shall be eliminated.

304.6.2 Any remaining commercial licenses available after the completion of the process set forth in Section 304.6.1 will be issued by the conduct of a lottery by the Town Clerk’s Office, the time and date to be published prior to April 1st, with priority given to those who have completed
voluntary Conservation Time in the previous year sufficient to qualify for a Conservation License Fee Reduction. An individual must be present at the lottery in order to receive a license or a position on the waiting list. Even if there are no remaining commercial licenses available, the annual lottery shall be conducted to determine an applicant’s position on the waiting list in the event that licenses become available after the period of issuance. The lottery shall be conducted by placing all of the names of resident applicants present who have completed voluntary Conservation Time in the previous year into a bin or hat and by then drawing a name from the bin or hat until all the commercial licenses are sold and continued until all names are drawn. The same process shall be repeated with all of the names of the non-resident applicants present who have completed voluntary Conservation Time in the previous year sufficient to qualify for a Conservation License Fee Reduction.

304.6.3 The lottery shall be continued by placing all of the names of resident applicants present who have not completed voluntary Conservation Time in the previous year into a bin or hat and by then drawing a name from the bin or hat until all the commercial licenses are sold and continued until all names are drawn. The same process shall be repeated with all of the names of the non-resident applicants present who have not completed voluntary Conservation Time in the previous year.

304.6.4 All names shall be drawn in order to assign each applicant present a priority position on the resident, Conservation Time completed waiting list; the non-resident Conservation Time completed waiting list; the resident, no-Conservation Time completed waiting list; or the non-resident, no-Conservation Time completed waiting list to be maintained in the Town Clerk’s Office in the event that commercial licenses become available after the period of issuance.

304.6.5 Commercial licenses that become available after the period of issuance, whether by voluntarily return, death of licensee or otherwise, may be reissued by the Town Clerk at the current fee to an applicant of the same license category (resident or non-resident) as the available license according to the waiting list priorities established pursuant to this section. Once a new licensee’s name is selected from the waiting list, that applicant will be contacted by the Town Clerk’s Office to pick up his/her license. The Town Clerk shall maintain a record of the date and time of actual or attempted contact with the selected applicant. If the applicant does not pick up his/her new license within 72 hours of the date and time of the earliest actual or attempted contact by the Town Clerk’s Office, the same system shall be employed to select the next name on the waiting list of the same license category (resident or non-resident) as the available license and the same procedure repeated to keep the number of Non-resident Commercial licenses equal to ten percent of the number of Resident Commercial licenses.
304.6.6 Nothing in Section 304.6 shall be interpreted to increase the available number of Non-resident Commercial licenses to more than ten percent of the available number of Resident Commercial licenses.

304.7 **Student Commercial License**

Sections 304.5 and 304.6 do not apply to Student Commercial licenses. The following procedures and requirements apply to Student Commercial licenses:

304.7.1 Applicants must annually submit a completed application form to the Town Clerk on or before April 30.

304.7.2 Student Commercial licenses shall be available during normal Town business hours to qualified applicants beginning May 16.

304.7.3 Any Student Commercial license issued becomes effective on June 1 of the year of issuance and expires at midnight on May 31 of the following year.

304.7.4 A maximum of nine (9) Resident Student Commercial licenses and one (1) Non-resident Student Commercial license will be issued each year. Licenses will be issued on a first come, first served basis, except that if on May 16 the number of applicants exceeds the number of licenses available, then names shall be drawn from lot until all licenses are issued. An applicant must be present at the time of the lottery or else be passed over. All Student Commercial licenses are annual, non-renewable licenses. The fact that an individual held a Student Commercial license in a prior year does not affect his/her eligibility for a Student Commercial license in a succeeding year.

304.7.5 All Student Commercial licensees must have a legal size measuring devise for clams in his/her possession when engaged in any activity permitted under such license.

304.7.6 All Student Commercial licensees shall maintain their student status as defined herein throughout the term of the license. Failure to do so shall result in the suspension of the license for the remainder of the license term.

304.8 Any license issued under this Ordinance is subject to the partial or total closing of the coastal waters or flats.

304.9 No person may hold more than one Town-issued shellfish license at one time.

Sec. 305 **Application**

All applicants must submit a completed application form to the Town Clerk prior to issuance of a license to the applicant.

Applicants for a renewal Commercial License must annually submit a completed application form to the Town Clerk by the 15th day of February. If any portion of the application form is not filled out in its entirety, the application will not be considered. Applicants submitting applications after February 15 are subject to a $100 late fee. No
application will be accepted after the close of business on March 1. If a prospective applicant fails to submit an application by the March 1 deadline, such person shall not be licensed for that year unless through the “non-renewal” procedure set forth in Section 304.6 of this Ordinance; if a license is issued to such late applicant under Section 304.6 of the Ordinance, the applicant shall pay a $200 late fee. This paragraph does not apply to student commercial licenses.

The annual application will be in the form of an affidavit and will include the applicant’s name, current address, period of residence, date of birth, height, weight and other such necessary information as the Town Clerk may require. There must also be included the physical location of residence. The application must be signed by the applicant and acknowledged by the Town Clerk.

The completed application will be reviewed by the Shellfish Conservation Warden(s) for accuracy and the applicant shall be notified by first class and certified mail of any discrepancies found. The applicant will have 10 business days from receipt of notice to respond to any discrepancies that may have been found. After midnight of the 10th day, if the applicant does not respond to a Shellfish Conservation Warden in writing regarding the notice received, the application will be deemed denied. If the license has already been issued before such discrepancy is found, the Selectmen shall suspend or revoke the license upon notice and hearing (provided that a hearing shall be held only if requested by the licensee) and until the discrepancy is resolved. If the discrepancy is not resolved in the licensee’s favor, the license may be revoked pursuant to Section 311.

Any person applying for (or holding) a shellfish license under the Ordinance shall notify the Town Clerk within 10 days of an address change, regardless of whether the address change is also a change of residency.

Sec. 306 Possession of License
306.1 Exhibition on demand. When any person is engaged in any activity which is licensed under this Ordinance, he shall, on request of a Shellfish Conservation Warden or other authorized person, exhibit a license.

306.2 Prima facie evidence. A failure to exhibit a license within a reasonable time, when requested, shall be prima facie evidence that the person is not licensed.

Sec. 307 Search, Consent to Inspection; Violation
307.1 Search Powers. Any Shellfish Conservation Warden, in uniform, may search without a warrant and examine any watercraft, aircraft, conveyance, vehicle, box, bag, locker, trap, crate or other receptacle or container for any marine organism when he has probable cause to believe that any marine organism taken, possessed or transported contrary to law is concealed thereon or therein.

307.2 Consent to Inspection. Any person who signs an application for a license or receives a license under this part has a duty to submit to inspection and search
for violations related to the licensed activities by a Shellfish Conservation Warden under the following conditions.

A. Watercraft or vehicles and the equipment located on watercraft or vehicles which are used primarily in a trade or business requiring a license under this part may be searched or inspected at any time.

B. Any other location where activities subject to this part are conducted may be inspected or searched during the hours when those activities occur.

C. A location specified in subparagraph B above may be inspected at any time if a Shellfish Conservation Warden has a reasonable suspicion of a violation of this part.

D. No residential dwelling may be searched without a search warrant unless otherwise allowed by law.

307.3 **Seizure of Evidence.** Any person who signs an application for a license or received a license under this part has a duty to permit seizure of evidence of a violation of this Ordinance found during an inspection or search.

307.4 **Refusal.** Refusal to permit inspection or seizure shall be a basis for suspension of any license under this Ordinance.

Sec. 308  **Limitation of Diggers**

The shellfish resources are limited. A commercial or recreational digger can be expected to harvest a certain volume of shellfish per year; therefore, the number of diggers must be controlled to preserve the shellfish resource. The number of available Shellfish licenses of each type may vary from year to year according to the finding and estimates of the Marine Resources Committee and the DMR area biologist based on data concerning the resource capabilities and management requirement consistent with proper resource utilization as determined by surveys conducted pursuant to Section 202 of this Ordinance. The following procedures will be followed to control Shellfish License availability:

308.1 Prior to the first business day in March the Marine Resources Committee in conjunction with the DMR area biologist will establish the number of commercial Shellfish Licenses to be made available. If there is a difference between the number of licenses recommended by the DMR area biologist and the Marine Resources Committee, then the Marine Resources Committee will make a recommendation to the Board of Selectmen, which will make a final determination of the number of licenses to be issued.

308.2 The Marine Resources Committee will notify the Town Clerk in writing prior to the first business day in March of the number of Shellfish Licenses, by type, to be made available for issue. No Shellfish Licenses may be reserved.
Sec. 309 Misrepresentation
It shall be unlawful and a violation of this Ordinance for any person to falsify, or give false information in connection with a Shellfish License application. In addition to any criminal penalties which may result from a violation of this Ordinance, the Shellfish License granted to any person who gives false information on a Shellfish License application shall be void after notice and hearing by the Board of Selectmen.

Sec. 310 Suspension
310.1 In the event any Shellfish Licensee has two Adjudications, within a thirty-six month period, for a violation of either this Ordinance and/or State law regarding shellfish regulation, 12 M.R.S.A. §§ 6601-6681, as may be amended from time to time, that have taken place within the territorial limits of the Town of Harpswell, then the licensee shall receive a notice of suspension of the license for thirty (30) days from the Board of Selectmen or its designee. Any subsequent Adjudication will result in a notice of suspension of the license for ninety (90) days. Exceptions: Licensee may not be suspended or revoked for adjudications of Section 306 of this Ordinance.

310.2 A resident recreational licensee whose Shellfish License has been suspended or revoked pursuant to this Ordinance may reapply for a recreational license only after the suspension or revocation period has expired.

310.2.1 A non-resident recreational licensee whose license has been suspended or revoked pursuant to this Ordinance may not reapply for a recreational license in Harpswell for five (5) years. Whenever a non-resident recreational license is revoked, that license shall be offered to the next person on the waiting list maintained by the Town Clerk’s Office pursuant to this Ordinance.

310.3 The Board of Selectmen or its designee shall send a notice of suspension via first class and certified mail to the licensee upon learning the License Holder’s State of Maine Department of Marine Resources License is suspended. This municipal license suspension shall remain in effect until such time as the License Holder’s State of Maine Department of Marine Resources License is reinstated.

310.4 The notice of suspension or revocation shall be sent to the Licensee’s last known address as recorded at the Town Clerk’s Office. The suspension or revocation shall become effective if the appeal period as indicated in Section 310.5 of this Ordinance expires or after the Board of Selectmen’s decision upholding the suspension or revocation is announced. If the licensee does not sign for the certified mail notice, the Board of Selectmen may appoint a Law Enforcement Officer to serve a copy of the notice on the licensee.

310.5 Any Licensee who receives notification of a suspension or revocation pursuant to this Ordinance shall be entitled to a hearing before the Board of Selectmen upon filing of a written Request for Hearing within seven (7) days of receipt of notification.
Sec. 311  Revocation
311.1 Any License that has been suspended pursuant to this Ordinance for at least 210 consecutive days, upon recommendation of the Marine Resources Committee, may be revoked by the Board of Selectmen. A license may also be revoked if it is discovered that the licensee has provided false information on the application. Licensee shall be notified pursuant to Section 310.4 and may request a hearing before the Board of Selectmen as set forth in Section 310.5.

CHAPTER 4. ENFORCEMENT

Sec. 401  Harvesting Prohibited
A person shall not harvest, take or possess shellfish from the tidal waters or clam flats of the Town of Harpswell without first obtaining a Shellfish License from the Town Office.

Sec. 402  Clam Size and Possession of Harvest
A person shall not possess soft shell clams that are less than two (2) inches in the largest diameter to the amount of more than 10% of any lot.

402.1 Quahog size restrictions
It shall be unlawful to take, possess, ship, transport, buy or sell quahogs that are less than one inch in thickness as measured across the hinge width. Hinge width: Hinge width means the thickness of a quahog as measured between the convex apex of the right shell and the convex apex of the left shell. Exception: Quahog size restriction will apply unless these quahogs are properly identified as raised by means of aquaculture.

402.2 European oyster size restrictions
It shall be unlawful to take, possess, ship, transport, buy, or sell European oysters that are less than three (3) inches in the longest diameter.

402.3 Razor clam size restrictions
It shall be unlawful to take, possess, ship, transport, buy, or sell Razor clams that are less than four (4) inches.

Sec. 403  Method of Determining Shellfish Size Tolerance
The tolerance of 10% must be determined by a numerical count of not less than one (1) nor more than four (4) pecks taken at random from various parts of the lot.

403.1 If the entire lot contains less than one (1) peck, the tolerance must be determined by a numerical count of the entire lot.

Sec. 404  Stopping for Inspection
It shall be unlawful for the operator of a motor vehicle, boat, vessel, or conveyance of any kind, or any person:

404.1 Stopping: To fail or refuse to stop immediately upon request of any Shellfish Conservation Warden in uniform.

404.2 Remaining Stopped: After a person has stopped, to fail to remain stopped until the Shellfish Conservation Warden has released them.
404.3 **Standing By:** To fail to refuse to stand by immediately, for inspection upon request of any Shellfish Conservation Warden in uniform

404.4 **Throwing or Dumping Items:** Who has been requested or signaled to stop by any Shellfish Conservation Warden in uniform, to throw, dump or destroy any type of marine resource, from any type of container, pail, barrel, or expose to the water or mud, before the Shellfish Conservation Warden has inspected the product.

Sec. 405  **Conservation Area**

405.1 **Taking From A Conservation Area Prohibited:** It shall be unlawful for any person to harvest, take, or possess shellfish from any areas closed by the Town of Harpswell in accordance with DMR Regulation, Chapter 7. Harvesting shellfish in a closed area is a violation of this ordinance and is punishable under Title 12 MRSA §6671.

Boundaries of conservation closures are explicitly defined in the conservation closure application submitted by the Town of Harpswell to DMR and are part of the resulting permit issued by DMR. These permits are posted at the town office and online: [http://www.maine.gov/dmr/shellfish-sanitation-management/programs/municipal/ordinances/towninfo.html](http://www.maine.gov/dmr/shellfish-sanitation-management/programs/municipal/ordinances/towninfo.html).

405.2 **Washing or Holding In A Conservation Area Prohibited:** It shall be unlawful to wash, hold or keep shellfish in any area closed by regulation or to possess, ship, transport, or sell shellfish so washed, held or kept.

Sec. 406  **Enforcement**

The Ordinance shall be enforced by a law enforcement officer appointed by the Board of Selectmen to be known as the Municipal Shellfish Conservation Warden.

Sec. 407  **Penalty**

A person who violates this Ordinance shall be punished as provided in Title 12 M.R.S.A. § 6671, as may be amended from time to time.

Sec. 408  **Aiding and Abetting**

A harvester holding a commercial license who knowingly helps, assists or facilitates the harvest of shellfish in violation of this Ordinance shall be subject to prosecution for the same violations and penalties as the person the licensee has assisted.

Sec. 409  **Appeals**

Except as otherwise provided herein, any decision made by the Shellfish Conservation Warden shall stand unless appeal is made in writing to the Board of Selectmen within seven (7) days of the date of the decision.
CHAPTER 5. SEPARABILITY, DURATION AND REPEAL

Sec. 501 Separability
If any provision of this Ordinance is declared to be invalid, that declaration does not affect the remainder of the Ordinance.

Sec. 502 Duration
This Ordinance and any amendments thereto shall remain in effect until Repealed by the Town or rescinded by the Commissioner of Marine Resources.

Sec. 503 Repeal
Any ordinance regulating the harvesting or conservation of shellfish in the Town that is inconsistent with this Ordinance is hereby repealed.
Effective Dates
Re-enacted March 14, 1992
Amended
March 13, 1993
March 12, 1994
June 10, 1994
December 5, 1994
March 16, 1996
June 23, 1997
March 6, 1999
March 11, 2000
August 23, 2001
March 16, 2002
November 23, 2002
March 8, 2003
May 20, 2004
March 13, 2005
March 11, 2006
March 10, 2007
March 14, 2009
March 20, 2010
March 12, 2011
June 14, 2011
March 10, 2012
June 12, 2012
March 9, 2013
March 15, 2014
March 14, 2015
March 12, 2016
March 11, 2017

The Shoreland Zoning Ordinance previously adopted on June 27, 1974 and subsequently amended was repealed and replaced by this ordinance.

THIS UNOFFICIAL TABLE OF CONTENTS IS NOT A PART OF THE ORDINANCE AND IS PROVIDED FOR CONVENIENCE ONLY.
# SHORELAND ZONING ORDINANCE

## TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Purposes</td>
<td>1</td>
</tr>
<tr>
<td>2</td>
<td>Authority</td>
<td>1</td>
</tr>
<tr>
<td>3</td>
<td>Applicability</td>
<td>1</td>
</tr>
<tr>
<td>4</td>
<td>Effective Date and Repeal of Formerly Adopted Ordinance</td>
<td>2</td>
</tr>
<tr>
<td>5</td>
<td>Availability</td>
<td>2</td>
</tr>
<tr>
<td>6</td>
<td>Severability</td>
<td>2</td>
</tr>
<tr>
<td>7</td>
<td>Conflicts With Other Ordinances</td>
<td>2</td>
</tr>
<tr>
<td>8</td>
<td>Amendments</td>
<td>2</td>
</tr>
<tr>
<td>9</td>
<td>Land Use Requirements</td>
<td>3</td>
</tr>
<tr>
<td>10</td>
<td>Non-Conformance</td>
<td>3</td>
</tr>
<tr>
<td>10.1</td>
<td>Purpose</td>
<td>3</td>
</tr>
<tr>
<td>10.2</td>
<td>General</td>
<td>3</td>
</tr>
<tr>
<td>10.3</td>
<td>Nonconforming Structures</td>
<td>3</td>
</tr>
<tr>
<td>10.4</td>
<td>Nonconforming Uses</td>
<td>7</td>
</tr>
<tr>
<td>10.5</td>
<td>Nonconforming Lots</td>
<td>8</td>
</tr>
<tr>
<td>10.6</td>
<td>Creation of Nonconforming Lot(s) for Preservation or Conservation Purposes</td>
<td>9</td>
</tr>
<tr>
<td>11</td>
<td>Districts and Zoning Map</td>
<td>10</td>
</tr>
<tr>
<td>12</td>
<td>Interpretation of District Boundaries</td>
<td>10</td>
</tr>
<tr>
<td>13</td>
<td>Establishment of Districts</td>
<td>11</td>
</tr>
<tr>
<td>14</td>
<td>Table of Land Uses In The Shoreland Zone</td>
<td>16</td>
</tr>
<tr>
<td>15</td>
<td>Land Use Standards</td>
<td>20</td>
</tr>
<tr>
<td>15.1</td>
<td>Minimum Lot Standards Table</td>
<td>20</td>
</tr>
<tr>
<td>15.2</td>
<td>Principle and Accessory Structures</td>
<td>22</td>
</tr>
<tr>
<td>15.3</td>
<td>Piers, Docks, Wharves, Bridges and Other Structures and Uses Extending Over or Below the Maximum High Water Line of a Great Pond, Stream, Tributary Stream, HAT of the Coastal Wetland or Within a Freshwater Wetland</td>
<td>26</td>
</tr>
<tr>
<td>15.4</td>
<td>Campgrounds</td>
<td>27</td>
</tr>
<tr>
<td>15.5</td>
<td>Individual Private Campsites</td>
<td>28</td>
</tr>
<tr>
<td>15.6</td>
<td>Commercial and Industrial Uses</td>
<td>29</td>
</tr>
<tr>
<td>15.7</td>
<td>Parking Areas</td>
<td>29</td>
</tr>
<tr>
<td>15.8</td>
<td>Roads and Driveways</td>
<td>30</td>
</tr>
<tr>
<td>15.9</td>
<td>Signs</td>
<td>32</td>
</tr>
<tr>
<td>15.10</td>
<td>Storm Water Runoff</td>
<td>32</td>
</tr>
<tr>
<td>15.11</td>
<td>Subsurface Wastewater Disposal</td>
<td>33</td>
</tr>
<tr>
<td>15.12</td>
<td>Utilities and Essential Services</td>
<td>34</td>
</tr>
<tr>
<td>15.13</td>
<td>Agriculture</td>
<td>34</td>
</tr>
<tr>
<td>15.14</td>
<td>Timber Harvesting</td>
<td>35</td>
</tr>
<tr>
<td>15.15</td>
<td>Clearing or Removal of Vegetation for Activities other than Timber Harvesting</td>
<td>35</td>
</tr>
<tr>
<td>15.16</td>
<td>Earthmoving, Erosion and Sedimentation Control</td>
<td>37</td>
</tr>
<tr>
<td>15.17</td>
<td>Soils</td>
<td>38</td>
</tr>
<tr>
<td>15.18</td>
<td>Water Quality</td>
<td>39</td>
</tr>
<tr>
<td>15.19</td>
<td>Archeological and Historic Sites</td>
<td>39</td>
</tr>
<tr>
<td>15.20</td>
<td>Home Occupations</td>
<td>39</td>
</tr>
<tr>
<td>15.21</td>
<td>Fertilizer Use</td>
<td>40</td>
</tr>
<tr>
<td>15.22</td>
<td>“In-Law” Apartments</td>
<td>40</td>
</tr>
<tr>
<td>15.23</td>
<td>Community Piers, Docks and Wharves</td>
<td>41</td>
</tr>
<tr>
<td>15.24</td>
<td>Swimming Pools</td>
<td>42</td>
</tr>
<tr>
<td>16</td>
<td>Administration</td>
<td>42</td>
</tr>
</tbody>
</table>
SECTION 1. PURPOSES

The citizens of the Town of Harpswell, through enactment of this Shoreland Zoning Ordinance, commit to preserve and protect the Town of Harpswell’s coastal marine heritage. The provisions contained herein are designed and intended to foster the continuation of traditional marine uses and encourage the development of new marine uses to the greatest extent practicable.

In addition, 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 water; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas of Harpswell.

SECTION 2. AUTHORITY

This Ordinance has been prepared in accordance with the provisions of 38 M.R.S.A. §§ 435-449, as may be amended from time to time.

SECTION 3. APPLICABILITY

This Ordinance applies to all land areas within two hundred fifty (250) feet, horizontal distance, of the maximum high water line of any great pond; within two hundred fifty (250) feet, horizontal distance, of the highest annual tidal (HAT) of any coastal wetland (see definitions addendum, Wetland – Coastal Wetland); within two hundred fifty (250) feet, horizontal distance, of the upland edge of a freshwater wetland of ten (10) or more contiguous acres, or the upland edge of a freshwater wetland of less than ten (10) contiguous acres and adjacent to a surface water body, excluding any tributary stream, such that in a natural state, the combined surface area is in excess of ten (10) acres; and within seventy-five (75) feet horizontal distance of the maximum high water line of a stream or tributary stream. This Ordinance also applies to the portion of the Mitchell Field Marine Business District as shown on the Official Shoreland Zoning Map that is more than two hundred fifty (250) feet, horizontal distance, from the HAT of the coastal wetland. This Ordinance also applies to Eagle Island as shown on the Official Shoreland Zoning Map.

This Ordinance also applies to any structure built on, over or abutting a dock, wharf, pier or other structure extending below the maximum high water line of a great pond, freshwater wetland of ten (10) or more contiguous acres or tributary stream, or below the HAT of the coastal wetland as described in this section.

Citizen’s Note: Land use activity adjacent to protected natural resources requires a permit from the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. § 480-C, as may be amended from time to time. Please see Code Enforcement Officer for more information.
SECTION 4. EFFECTIVE DATE AND REPEAL OF FORMERLY ADOPTED ORDINANCE

This Ordinance was originally enacted and became effective on March 14, 1992. Subsequent amendments become effective on the dates of their enactment, unless otherwise specified, and are listed on the Title Page. All amendments to and replacements of this Ordinance are subject to approval by the Department of Environmental Protection. If Department of Environmental Protection approval is made with conditions, the Ordinance shall be administered in accordance with those conditions pending further town legislative action. The Shoreland Zoning Ordinance previously adopted on June 27, 1974, and subsequently amended was repealed and replaced by this Ordinance.

SECTION 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 and at the expense of the person making the request. Notice of availability of this Ordinance shall be posted.

SECTION 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.

Throughout this ordinance there are "Citizen's Notes". These notes shall not be considered part of this ordinance as adopted by the Town, but shall only be considered as aids for citizens to use this ordinance and as guides to the intent of ordinance provisions and their proper interpretation.

SECTION 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 Town, the more restrictive provision shall control unless State shoreland zoning law provides otherwise.

SECTION 8. AMENDMENTS

This ordinance may be amended by majority vote of the Town. The effective date of an amendment shall be its date of enactment unless otherwise specified. Copies of amendments, attested and signed by the Municipal Clerk, shall be submitted to the Commissioner of Environmental Protection following adoption by the municipal legislative body and shall not be effective unless approved by the Commissioner of Environmental Protection. If the Commissioner of Environmental Protection fails to act on any amendment within forty-five (45) days of the Commissioner'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, as if such amendment is approved by the Commissioner.
SECTION 9. LAND USE REQUIREMENTS

Except as this Ordinance specifies, no structure or land shall hereafter be used or occupied, and no 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 variance is granted by the Board of Appeals.

SECTION 10. NONCONFORMANCE

10.1. Purpose. It is the intent of this Ordinance to promote land use conformities, except that lawful nonconforming conditions that existed before the effective dates of this Ordinance and of any amendments to this Ordinance shall be allowed to continue, subject to the requirements set forth in this section.

Citizen’s Note: Nonconformance should not be considered illegal or unacceptable. Nonconformance means lots of record or uses that are grandfathered because they were in conformance with the standards in effect before the effective date of this Ordinance and any amendments that created new nonconforming conditions. The concerned party is encouraged to read through this Ordinance and contact a Town official should a question arise.

10.2. General

10.2.1. Transfer of Ownership. Nonconforming structures, lots and uses may be transferred, and the new owner may continue the nonconforming use or continue to use the nonconforming structure or lot, subject to the provisions of this ordinance.

10.2.2. Repair and Maintenance. This Ordinance allows, without a permit, the normal upkeep and maintenance of nonconforming uses and structures including repair or renovations that do not involve expansion of the nonconforming use or structure, and such other changes in a nonconforming use or structure as Federal, State, or local building and safety codes may require.

Citizen’s Note: See Definitions Addendum for the definitions of nonconforming structures, nonconforming uses, and nonconforming lots.

10.3. Nonconforming Structures

10.3.1. Expansions. A nonconforming 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 nonconformity of the structure. For the purposes of this Ordinance, an increase to the nonconformity of the structure shall mean:

- any expansion towards a water body, great pond, stream, tributary stream, coastal wetland, freshwater wetland or property line that decreases the shortest existing nonconforming setback distance from the water body, great pond, stream, tributary stream, coastal wetland, freshwater wetland or property line; or
- any expansion that would cause the structure to exceed the impermeable surface coverage requirements of Section 15.2.4; or
- any expansion that would cause the structure to exceed the height limits of Section 15.2.2.
The shortest existing nonconforming setback distance from a water body, great pond, stream, tributary stream, coastal wetland, freshwater wetland or a property line may not be measured from an existing area used mainly for access to a structure, such as a small patio, terrace, landing, or small set of stairs.

Citizen’s Note: It should be understood that small patios, terraces, landings, or small sets of stairs within minimum setbacks do not change the setback of the adjacent structure and cannot be used to justify expansion of any other part of the structure into that setback.

10.3.1.1. Further limitations. If any portion of a structure in existence as of January 1, 1989 is less than the required setback from the maximum high water line of a great pond, stream, tributary stream, HAT of the coastal wetland, upland edge of a freshwater wetland, or from a property line, that portion of the structure shall not be expanded in floor area or volume, by thirty percent (30%) or more, during the lifetime of the structure. If a replacement structure conforms to the requirements of Section 10.3.2.2 and is less than the required setback from a great pond, stream, tributary stream, coastal wetland or freshwater wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by thirty percent (30%) in floor area and volume since that date.

Citizen’s Note: Disputed decisions may be appealed to the Board of Appeals.

10.3.1.2. Whenever a new, enlarged, or replacement foundation is constructed under a nonconforming 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 Code Enforcement Officer, basing the decision on the criteria specified in Section 10.3.2.1, Relocation. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 10.3.1.1, Further limitations, 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.

10.3.2. Relocation, Reconstruction, or Replacement

10.3.2.1. Relocation. A nonconforming 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 Code Enforcement Officer, and provided that the applicant demonstrates that the present subsurface wastewater disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal 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 nonconforming. Any relocation approved by the Code Enforcement Officer pursuant to this subsection shall be endorsed in writing by the Code Enforcement Officer.
In determining whether the building relocation meets the setback to the greatest practical extent, the Code Enforcement Officer 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 systems 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 resource setback area in order to relocate a structure, the Code Enforcement Officer 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:

10.3.2.1.1. 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 fifty percent (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.

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

10.3.2.2. Reconstruction or Replacement – More than Fifty Percent of Value. Any nonconforming structure that is located less than the required setback from a waterbody, great pond, stream, tributary stream, coastal wetland, freshwater wetland or from a property line, and that is removed, damaged, or destroyed, regardless of the cause, by more than fifty percent (50%) of the assessed value of the structure, as adjusted by the Town’s assessment ratio as most recently certified by the Assessors to the State of Maine, before such damage, destruction, or removal, as determined by the Assessors or their designee in consultation with the Code Enforcement Officer, may be reconstructed or replaced provided that a permit is obtained within one (1) year of the date of said damage, destruction, or removal, and provided that such replacement or reconstruction is in compliance with the setback requirements to the greatest practical extent, as determined by the Code Enforcement Officer, in accordance with the purposes of this Ordinance. In no case, shall a structure be reconstructed or replaced so as to increase its nonconformity. Any reconstruction or replacement approved by the Code Enforcement Officer pursuant to this subsection shall be endorsed in writing by the Code Enforcement Officer. 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 10.3.1. above, as determined by the nonconforming 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 10.3.2.1 above.

In determining whether the building reconstruction or replacement meets the water body, great pond, stream, tributary stream, coastal wetland, or freshwater wetland setback to the greatest practical extent, the Code Enforcement Officer shall consider, in addition to the criteria in Section 10.3.2.1 above, the physical condition and type of foundation present, if any.

10.3.2.3. Reconstruction or Replacement – Fifty Percent or Less of Value. Any nonconforming structure that is located less than the required setback from a water body, great pond, stream, tributary stream, coastal wetland or freshwater wetland or from a property line and that is removed by fifty percent (50%) or less of the assessed value of the structure, as adjusted by the Town’s assessment ratio as most recently certified by the Assessors to the State of Maine, as determined by the Assessors or their designee in consultation with the Code Enforcement Officer or damaged or destroyed by fifty percent (50%) or less of the assessed value of the structure, as adjusted by the Town’s assessment ratio as most recently certified by the Assessors to the State of Maine as determined by the Assessors or their designee in consultation with the Code Enforcement Officer, 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.

10.3.2.4. Authority of Planning Board to Exercise Jurisdiction over an Application. Except as provided for below, for any application for relocation of a nonconforming structure made under 10.3.2.1, or for the reconstruction or replacement of a nonconforming structure involving more than fifty percent (50%) of its adjusted assessed value made under 10.3.2.2, the Code Enforcement Officer shall provide written notice to the Planning Board and all property owners within two hundred fifty (250) feet of the property as listed on the Town’s most recent assessing records that a relocation, reconstruction or replacement application has been received and is being reviewed. The opportunity for the Planning Board to take jurisdiction under this provision and to receive notice shall not apply in any of the following situations:

(a) The relocation, replacement, or reconstruction will be carried out such that the structure complies with all applicable setback requirements, or
(b) The structure being relocated is an accessory structure that meets all of the following requirements:
   1) The floor area of the existing nonconforming structure is less than two hundred (200) square feet,
   2) The floor area or volume of the structure will not be increased,
   3) The structure is and will continue to be accessory to the principal use of the property,
   4) The structure will not be served by water, and
   5) The structure has not been and will not be used for human habitation, or
(c) The structure being reconstructed or replaced is an accessory structure that meets all of the following requirements:
1) The floor area of the existing nonconforming structure is less than two hundred (200) square feet,
2) The floor area and volume of the replacement or reconstructed structure will not be larger than one hundred fifty percent (150%) of the floor area and volume of the existing structure and the replacement or reconstruction will not increase the floor area and volume of the existing structure that is nonconforming by more than thirty (30) percent in accordance with Section 10.3.1,
3) The existing structure is accessory to the principal use of the property and the replacement or reconstructed structure will continue to be so,
4) The replacement or reconstructed structure will not be served by water, and
5) The replacement or reconstructed structure will not be used for human habitation.

During that forty (40) day time period, the Planning Board may elect to exercise jurisdiction over the relocation, reconstruction or replacement application. The Planning Board’s review, if any, shall be governed by the same review standards as govern the Code Enforcement Officer’s review. The Code Enforcement Officer shall not issue any permit under this Section until the earlier of (a) forty (40) days after the date that the Code Enforcement Officer provides such written notice to the Planning Board and all property owners within two hundred fifty (250) feet of the property as listed on the Town’s most recent assessing records or (b) the date the Planning Board declines to exercise jurisdiction over the application. Any relocation, reconstruction or replacement application approved by the Planning Board pursuant to this subsection shall be endorsed in writing. Failure of any property owner to receive the notice sent under this subsection does not invalidate any action taken by the Code Enforcement Officer or Planning Board.

10.3.3. Change of Use of a Nonconforming Structure. The use of a nonconforming 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 impact on a great pond, stream, tributary stream, coastal wetland or freshwater wetland described in Section 3 of this Ordinance, 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 historical resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

10.4. Nonconforming Uses

10.4.1. Expansions. Expansions of nonconforming uses are prohibited, except that nonconforming residential and institutional uses may, after obtaining a permit from the Code Enforcement Officer, be expanded within existing structures or within expansions of such
structures as allowed in Section 10.3.1 above; provided; however, expansions of nonconforming institutional uses in the resource Protection Districts are prohibited.

Citizen's Note: Disputed decisions may be appealed to the Board of Appeals.

10.4.2. Resumption Prohibited. A lot, building or structure in or on which a nonconforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use may not again be devoted to a nonconforming use. 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 for the preceding five (5) year period.

The Planning Board may, for good cause shown by the applicant, grant up to one year extension to the above time periods.

10.4.3. Change of Use. An existing nonconforming use may be changed to another nonconforming 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 CF I & II 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 10.3.3 above. A non-residential use in a CF I district may not be changed to a residential use.

10.5. Nonconforming Lots

10.5.1. Nonconforming lots whether located in legal subdivisions or elsewhere are subject to the provisions of this section.

10.5.2. Nonconforming lots. A nonconforming 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 are 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.

The status of a nonconforming lot of record shall not change as a result of realigning a common boundary line with the owner of a contiguous parcel of land, provided that (a) neither lot ends up more nonconforming after the transaction than it was prior to the transaction, as evidenced in writing by a land surveyor licensed to practice in Maine; (b) the parties cause copies of the recorded deeds to be submitted to the CEO within 30 days of the recording of the deeds at the registry; and (c) no permits or approvals relating to such nonconforming lot shall be issued unless or until the applicant complies with subsections (a) and (b) herein.

10.5.3. Contiguous Built Lots. If two or more contiguous lots or parcels are in a single or joint ownership of record as of the effective date(s) of this ordinance and any amendments thereto, 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 nonconforming 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 as a separate lot, provided that the State Minimum Lot Size Law and Subsurface Wastewater Disposal 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.

10.5.4. Contiguous Lots - Vacant or Partially Built. If two or more contiguous lots or parcels are in single or joint ownership of record as of the effective date(s) of this ordinance or any amendment thereto, 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 two or more contiguous lots, at least one of which is nonconforming, owned by the same person or persons on the effective date(s) of this ordinance or any amendments thereto 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 Rules and:

10.5.4.1. Each lot contains at least one hundred (100) feet of shore frontage and at least twenty thousand (20,000) square feet of lot area; or

10.5.4.2. Any lots that do not meet the frontage and lot size requirements of subparagraph 10.5.3. Are reconfigured or combined so that each new lot contains at least one hundred (100) feet of shore frontage and twenty thousand (20,000) square feet of lot area.

10.5.5. Changes in Lot Boundaries of Vacant Lots in Subdivisions. The boundaries of a vacant lot in a subdivision approved under the Subdivision Ordinance may be modified provided the lot or lots so created, even though nonconforming, are less nonconforming than the approved lot or lots, and further provided that the new lot or lots will have no greater adverse impact on a great pond, stream, tributary stream, coastal wetland or freshwater wetland described in Section 3 of this Ordinance, or on the subject or adjacent properties and resources than the uses anticipated by the approved subdivision plan. Approval of boundary modification shall be obtained by action of the Planning Board.

10.6. Creation of Nonconforming Lot(s) for Preservation or Conservation Purposes

10.6.1. An existing conforming lot or a nonconforming lot referred to in Sections 10.5.2. and 10.5.3. of this Ordinance may be divided so as to create not more than two lots, one or both of which are nonconforming lots, provided that the Harpswell Planning Board finds that the following conditions are met:

10.6.1.1. One of the resulting lots is conveyed to a governmental body or a nonprofit tax exempt organization (preservation grantee) for conservation or preservation purposes.

10.6.1.2. The division does not create or exacerbate a public health or safety problem on the nonconforming lot not to be conveyed to a preservation grantee (the remaining lot) to the extent that the remaining lot does not have adequate (as defined by the appropriate code) well and septic waste disposal options.
10.6.1.3. If the lot conveyed to the preservation grantee is undeveloped land, or is to be returned to an undeveloped state, the deed or instrument of conveyance shall contain restrictions which require that the land be preserved or maintained in its natural state (although not necessarily "forever wild") in perpetuity for one or more generally recognized purposes which benefit the natural, cultural, or architectural history of the Town or which preserves a diminishing or threatened place, parcel of land, resource, or habitat.

10.6.1.4. If the lot conveyed to the preservation grantee contains a pre-existing structure or improvement, the structure or improvement must have a demonstrable historic, cultural, or architectural importance and the deed or instrument of conveyance shall contain restrictions which require that the land and the improvements thereon be preserved and maintained so as to protect and preserve said historic, cultural, or architectural importance. No structure on the lot conveyed to a preservation grantee pursuant to this section may be inhabited as a dwelling.

SECTION 11. DISTRICTS AND ZONING MAP

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

1) Resource Protection
2) Shoreland Residential
3) Shoreland Business
4) Commercial Fisheries I
5) Commercial Fisheries II
6) Mitchell Field Marine Business
7) Eagle Island Historic District

11.1.1. Scale of Map. The Official Shoreland Zoning Map shall be drawn at a scale of not less than: 1 inch = 1500 feet. District boundaries shall be clearly delineated and a legend indicating the symbols for each district shall be placed on the map.

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

11.1.3. Changes to the Official Shoreland Zoning. If amendments, in accordance with Section 8, are made in the district boundaries or other matter portrayed on the Official Shoreland Zoning Map, such changes shall be made on the Official Shoreland Zoning Map within thirty (30) days after the amendment has been approved by the Commissioner of Environmental Protection. Any changes to the Official Maps must be approved by a majority vote of the Town.

SECTION 12. INTERPRETATION OF DISTRICT BOUNDARIES

The depiction of the Resource Protection Districts and all Shoreland Zoning Districts on the Official Shoreland Zoning maps for the Town of Harpswell is illustrative of their general location. The boundaries of these districts shall be determined by measurement from maximum high water line of a great pond, stream, tributary stream, the HAT of the coastal wetland or the
upland edge of a freshwater wetland described in Section 3 of this Ordinance, regardless of the location of the boundary shown on the map.

Unless otherwise set forth on the Official Shoreland Zoning Map, district boundary lines are property lines, the centerlines of streets, roads, and rights-of-way, and the boundaries of the shoreland area as defined herein. Where uncertainty exists as to the exact location of district boundary lines shown on the official map, the written description shall be the determining factor. The Board of Appeals shall be the final authority as to the location.

SECTION 13. ESTABLISHMENT OF DISTRICTS

13.1. 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 areas listed below when they occur within the limits of the Shoreland Zone, except that areas which are developed and areas which meet the criteria for the Shoreland Business or Commercial Fisheries I & II Districts need not be included within the Resource Protection District.

1. Areas within two hundred fifty (250) feet, horizontal distance, of the upland edge of freshwater wetlands described in Section 3 of this Ordinance, within two hundred fifty (250) feet, horizontal distance, of the HAT of coastal wetlands consisting predominantly of salt marshes, salt meadows, and freshwater wetlands associated with great ponds that 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 of Environmental Protection as of May 1, 2006. For the purposes of this paragraph “freshwater wetlands associated with great ponds” shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond, and have a surface elevation at or below the water level of the great pond during the period of normal high water. “Freshwater wetlands associated with great ponds” are considered to be part of that great pond.

2. Areas within the Shoreland Zone that are also within the V-zone of the one hundred (100) year flood plains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or as determined by a survey performed by a licensed surveyor establishing the base flood elevations for a parcel.

   **Citizen’s Note:** *To determine the location of the V-zone of the 100-year flood plain, see the Harpswell Flood Plain Ordinance, and the above-referenced maps currently in effect which are on file at the Town Office.*

3. Areas of two (2) or more contiguous acres with sustained slopes of twenty percent (20%) or greater.

4. Areas of two (2) or more contiguous acres supporting wetland vegetation and hydric soils, that are not part of a freshwater or coastal wetland described in Section 3 of this Ordinance and that are not surficially connected to a water body during the period of maximum high water.
5. Areas within the Shoreland Zone that are adjacent to tidal waters and are subject to severe erosion or mass movement, such as steep coastal bluffs.

**Citizens Note:** All Resource Protection areas as defined in subsections 2, 3, 4, and 5, above may not appear on the Official Shoreland Zoning Map. See Section 12 of this ordinance.

### 13.1.1. Principal Use

The Planning Board may approve a permit for a one-unit residential use and accessory residential structures in a Resource Protection District provided that the applicant demonstrates that all of the following conditions are met:

1. There is no location on the property, other than a location within the Resource Protection District, where the structure can be built.

2. The lot on which the structure is proposed is undeveloped and was established and recorded in the Cumberland County Registry of Deeds before the adoption of the Resource Protection District.

3. The proposed location of all buildings, sewage disposal systems, and other improvements are:
   a. located on natural ground slopes of less than twenty percent (20%); and
   b. located outside the floodway of the one hundred (100) year floodplain along rivers and artificially formed great ponds along rivers; and outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps; all buildings, including basements, are elevated at least one foot above the one hundred (100) year floodplain elevation; and the development is in compliance with the municipal floodplain elevation; and the development is in compliance with the municipal floodplain ordinance. If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be the width of the one hundred (100) year floodplain.

4. The total ground-floor area, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of fifteen hundred (1,500) square feet. This limitation shall not be altered by variance.

5. All structures, except functionally water-dependent structures, are set back from the maximum high water line of a great pond, stream, tributary stream, the HAT of the coastal wetland or the upland edge of a freshwater wetland described in Section 3 of this Ordinance to the greatest practical extent, but not less than seventy-five (75) feet horizontal distance. In determining the greatest practical extent, the Planning Board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the floodplain, and its proximity to moderate-value and high-value wetlands.

### 13.1.2. Accessory Use

The Planning Board may approve a permit for a home occupation as an accessory use in a Resource Protection District subject to the standards outlined in Section 15.20 of this Ordinance.

### 13.1.3. Community Shoreland Access Special Exception

The Planning Board may approve a permit for the construction of and/or improvement to community shoreland access ways and
associated accessory structures and uses in a Resource Protection District provided that the following conditions are met:

1. There is no location suitable for shoreland access, other than a location within the Resource Protection District, which is practicable.

2. The proposed location of structures, sewage disposal systems, and other improvements excluding raised boardwalks, stairs and open fences intended to restrict access to environmentally sensitive areas are:
   a. located on natural ground slopes of less than twenty percent (20%); and
   b. located outside the floodway of the one hundred (100)-year floodplain along rivers and artificially formed great ponds along rivers; and outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps; all buildings, including basements, are elevated at least one foot above the one hundred (100)-year floodplain elevation; and the development is in compliance with the municipal floodplain elevation; and the development is in compliance with the municipal floodplain ordinance. If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be the width of the one hundred (100)-year floodplain.

3. All structures, except functionally water-dependent structures, raised boardwalks, stairs, and fences intended to restrict access to environmentally sensitive areas are set back from the maximum high water line of a great pond, stream, tributary stream, the HAT of the coastal wetland or the upland edge of a freshwater wetland described in Section 3 of this Ordinance to the greatest practical extent, but not less than seventy-five (75) feet horizontal distance. In determining the greatest practical extent, the Planning Board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the floodplain, and its proximity to moderate-value and high-value wetlands.

13.2. Shoreland Residential District. The Shoreland Residential District includes areas of mixed residential, recreational, and light commercial development. Home occupations, including but not limited to commercial fishing, are an allowed accessory use within the Shoreland Residential District provided they meet the standards outlined in Section 15.20 of this Ordinance. The Shoreland Residential District includes areas other than those in the Resource Protection District, and areas which are used less intensively than those in the Shoreland Commercial District, or the Commercial Fisheries I & II District.

13.3. Shoreland Business District. The Shoreland Business District includes areas of mixed light commercial and residential uses. This district includes areas of one (1) or more contiguous acres in size devoted to a mix of residential and low intensity business and commercial uses. Industrial uses are prohibited. See definition.

13.4. Commercial Fisheries I District. The Commercial Fisheries I District shall be defined as the C.F. District existing prior to March 14, 1992 limited to seventy-five (75) feet inland from the HAT of the coastal wetland and includes areas where the existing predominant pattern of development is consistent with the allowed uses for this district as indicated in the Table of Land.
Uses, Section 14, and other areas which are suitable for functionally water-dependent uses, taking into consideration such factors as:

1. shelter from prevailing winds and waves;
2. slope of the land within two hundred fifty (250) feet, horizontal distance, of the HAT line;
3. depth of the water within one hundred fifty (150) feet, horizontal distance, of the shoreline;
4. available support facilities including utilities and transportation facilities; and
5. compatibility with adjacent upland uses.

Principal and accessory residential use is prohibited within the Commercial Fisheries I District.

13.5. Commercial Fishing II District. The Commercial Fishing II District shall be defined as the remaining one hundred seventy-five (175) foot zone behind CF I, to two hundred fifty (250) feet inland from the HAT of the coastal wetland.

In the CF II District, the residential standards as defined in Section 15.1 and Table I in Section 14 of this Ordinance shall apply. Both parts of CF I and CF II of any lot in the CF District existing prior to January 1, 1989, shall be included in calculating lot size.

13.6. Mitchell Field Marine Business District. The Mitchell Field Marine Business District includes the area of the shoreland area within two hundred fifty (250) feet of the HAT of the coastal wetland as well as the adjacent upland area that is more than two hundred fifty (250) feet from the maximum high water line as shown on the Official Shoreland Zoning Map.

13.7. Eagle Island Historic District. The Eagle Island Historic District includes all land area that comprises Eagle Island.

13.7.1. Purpose. The protection, enhancement, and perpetuation of landmarks of historical and cultural importance and significance is necessary to promote the economic, cultural, educational and general welfare of the citizens of Harpswell and the general public. It is recognized that the Eagle Island State Historic Site represents the unique confluence of time and place that produced significant historic, cultural and natural resources that constitute the heritage of the Town of Harpswell. It is the purpose of this district to:

13.7.1.1. protect and enhance the Eagle Island State Historic Site, which represents distinctive elements of Harpswell’s historic, cultural and natural resources heritage;
13.7.1.2. foster civic pride in the accomplishments of the past;
13.7.1.3. protect and enhance Harpswell’s attractiveness to visitors and the support and stimulus to the economy thereby provided; and
13.7.1.4. increase public awareness of the value of historic, cultural and natural resource preservation through public education about the Eagle Island State Historic Site.

13.7.2. Land Use Standards.

13.7.2.1. Permitted land uses include (a) one-unit residential, museum, visitors’ center, water related uses, boat house, wharf, and pier; (b) structures accessory to the uses set forth
in subsection (a); and (c) any educational, park, recreational, cultural or historic preservation uses related in any way to the uses set forth in subsection (a). Notwithstanding any other provision of this Ordinance to the contrary, there shall only be one (1) one-unit residential use allowed within the Eagle Island Historic District.

13.7.2.2. All new principal and accessory structures shall be set back at least seventy-five (75) feet, horizontal distance, from the maximum high water line of a great pond, stream, tributary stream, HAT of the coastal wetland or the upland edge of a freshwater wetland described in Section 3 of this Ordinance; provided, however, that any new principal and accessory structures consistent in footprint, height and general location with structures historically located on Eagle Island may be set back at least twenty-five (25) feet, horizontal distance, from the maximum high water line of a great pond, stream, tributary stream, HAT of the coastal wetland or the upland edge of a freshwater wetland described in Section 3 of this Ordinance. The great pond, stream, tributary stream, coastal wetland or freshwater wetland setback provision shall neither apply to structures which require direct access to the water as an operational necessity, such as piers, docks, and retaining walls, nor to other functionally water-dependent uses.

13.7.2.3. Principal or accessory structures and expansions of existing structures shall not exceed thirty (30) feet in height. All expansions of principal and accessory structures that increase the footprint of the structure shall not exceed thirty (30) feet in height.

13.7.2.4. The lowest floor elevation or opening of all building and structures including basements shall be elevated at least one foot above the elevation of the one hundred (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.

13.7.2.5. The total footprint area of all structures and other impermeable surfaces within the district shall not exceed twenty percent (20%) of the total land area of the district.

13.7.2.6. A building permit shall be obtained from the Code Enforcement Officer for the construction, expansion, replacement, rehabilitation or alteration of any structure containing uses set forth in Section 13.7.2.1 above.

13.7.2.7. Except as set forth herein, permitted land uses shall be conducted in accordance with all other applicable provisions of federal, State and local law, including, without limitation, the State of Maine Subsurface Wastewater Disposal Rules.

13.7.2.8. Sections 15.2 and 15.9 of this Ordinance do not apply to the district.

13.7.3. Conflicts. Notwithstanding any other provision of this Ordinance to the contrary, in the event that any provision of this Section 13.7 conflicts with any other provision of this Ordinance, Section 13.7 shall prevail.
**SECTION 14. TABLE OF LAND USES IN THE SHORELAND ZONE**

**14.1.** All land use activities, as indicated in Table 1, Land Uses in the Shoreland Zone, shall conform to all of the applicable land use standards in Section 15 of this Ordinance. The land use activities that are prohibited or allowed with or without permits are indicated in Table 1. The district designation for a particular site shall be determined by measurement from maximum high water line of a great pond, stream, tributary stream, the HAT of the coastal wetland or the upland edge of a freshwater wetland described in Section 3 of this Ordinance, regardless of the location of the boundary shown on the map.

<table>
<thead>
<tr>
<th>Land Uses</th>
<th>Shoreland Districts</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>RP</td>
</tr>
<tr>
<td>1. Non-intensive recreational uses not requiring structures such as</td>
<td>yes</td>
</tr>
<tr>
<td>hunting, fishing, and hiking</td>
<td></td>
</tr>
<tr>
<td>2. Motorized vehicular traffic on existing roads and trails</td>
<td>yes</td>
</tr>
<tr>
<td>3. Forest management activities except for timber harvesting</td>
<td>yes</td>
</tr>
<tr>
<td>4. <em>Timber Harvesting</em></td>
<td>CEO/PB</td>
</tr>
<tr>
<td>[Removed March 14, 2015]</td>
<td></td>
</tr>
<tr>
<td>5. *Clearing of vegetation for approved construction and other</td>
<td>CEO</td>
</tr>
<tr>
<td>allowed uses</td>
<td></td>
</tr>
<tr>
<td>6. Fire prevention activities</td>
<td>yes</td>
</tr>
<tr>
<td>7. Wildlife management practices</td>
<td>yes</td>
</tr>
<tr>
<td>8. Soil and water conservation practices</td>
<td>yes</td>
</tr>
<tr>
<td>9. Mineral exploration</td>
<td>no</td>
</tr>
<tr>
<td>10. Mineral extraction including sand and gravel extraction</td>
<td>no</td>
</tr>
<tr>
<td>11. Surveying and resource analysis</td>
<td>yes</td>
</tr>
<tr>
<td>12. Emergency operations</td>
<td>yes</td>
</tr>
<tr>
<td>13. *Agriculture</td>
<td>PB</td>
</tr>
<tr>
<td>14. Aquaculture</td>
<td>PB</td>
</tr>
<tr>
<td>15. Principal structures and uses</td>
<td>PB 10</td>
</tr>
<tr>
<td>15.1. One and two-unit residential uses, including driveways</td>
<td>no</td>
</tr>
<tr>
<td>15.2. Multi-unit residential</td>
<td>no</td>
</tr>
<tr>
<td>15.3. *Commercial</td>
<td>no 13</td>
</tr>
<tr>
<td>15.3.1 Commercial Fishing</td>
<td>no 13</td>
</tr>
<tr>
<td>15.4. *Industrial</td>
<td>no</td>
</tr>
<tr>
<td>15.5. *Governmental and Institutional</td>
<td>no 9</td>
</tr>
<tr>
<td>15.6. Small non-residential facilities for marine, scientific or</td>
<td>no</td>
</tr>
<tr>
<td>nature related purposes</td>
<td></td>
</tr>
<tr>
<td>15.7. Non-agricultural Fertilizer Use</td>
<td>no</td>
</tr>
<tr>
<td>15.7.2 Organic Fertilizer and composted manure</td>
<td>Yes$^{21}$</td>
</tr>
<tr>
<td>15.8. Community Shoreland Access</td>
<td>PB$^{20}$</td>
</tr>
<tr>
<td>16. Accessory Structures and uses</td>
<td>PB$^{11}$</td>
</tr>
<tr>
<td>17. Structural Repair</td>
<td>yes</td>
</tr>
<tr>
<td>17.1 Structural alteration/replacement: residential</td>
<td>CEO</td>
</tr>
<tr>
<td>17.2 Structural alteration/replacement: non-residential</td>
<td>CEO/ PB</td>
</tr>
<tr>
<td>18.1. Non-commercial piers, docks, wharves, bridges, and other structures and uses extending over or below the HAT, maximum high water line or wetland</td>
<td>PB$^{14}$</td>
</tr>
<tr>
<td>18.2. Commercial piers, docks, wharves, bridges, and other structures and uses extending over or below the HAT, maximum high-water line or wetland</td>
<td>PB$^{14}$</td>
</tr>
<tr>
<td>18.3 Community piers, docks and wharves</td>
<td>PB</td>
</tr>
<tr>
<td>19. Conversions of seasonal residences to year-round residences</td>
<td>no</td>
</tr>
<tr>
<td>20. *Home occupations</td>
<td>PB$^{8}$</td>
</tr>
<tr>
<td>21. Sewage disposal systems</td>
<td>PB$^{10}$/ LPI</td>
</tr>
<tr>
<td>22. *Essential services</td>
<td>PB</td>
</tr>
<tr>
<td>23. Service drops for allowed uses</td>
<td>yes</td>
</tr>
<tr>
<td>24. Public and private recreational areas involving minimal development but no building</td>
<td>PB</td>
</tr>
<tr>
<td>25. *Individual, private campsites</td>
<td>CEO</td>
</tr>
<tr>
<td>26. *Campgrounds</td>
<td>no $^{5}$</td>
</tr>
<tr>
<td>27. *Road construction</td>
<td>no $^{5}$</td>
</tr>
<tr>
<td>28. *Parking areas – residential</td>
<td>CEO/ PB</td>
</tr>
<tr>
<td>29. *Parking areas – non-residential</td>
<td>no $^{9}$</td>
</tr>
<tr>
<td>30. *Marinas</td>
<td>no</td>
</tr>
<tr>
<td>31. Boat Repair Facility</td>
<td>no</td>
</tr>
<tr>
<td>32. Filling and earthmoving of &lt;50 cubic yards</td>
<td>CEO</td>
</tr>
<tr>
<td>33. Filling and earthmoving of &gt;50 cubic yards but less than 1,000 cubic yards</td>
<td>PB</td>
</tr>
<tr>
<td>34. Filling and earthmoving of &gt;1000 cubic yards$^{12}$</td>
<td>PB</td>
</tr>
<tr>
<td>35. *Signs</td>
<td>CEO</td>
</tr>
<tr>
<td>36. Uses similar to allowed uses</td>
<td>CEO</td>
</tr>
<tr>
<td>37. Uses similar to uses requiring a CEO permit</td>
<td>CEO</td>
</tr>
<tr>
<td>38. Uses similar to uses requiring a PB permit</td>
<td>PB</td>
</tr>
<tr>
<td>39. Projects which use more than 1000 gallons of water/day</td>
<td>CEO</td>
</tr>
<tr>
<td>40. Land Management Roads</td>
<td>PB</td>
</tr>
<tr>
<td>41. Mobile Food Handlers</td>
<td>no</td>
</tr>
</tbody>
</table>
14.2. Key to Table 1:

Yes - Allowed (no permit required but the use must comply with all applicable land use standards.)
No - Prohibited
PB - Requires permit issued by the Planning Board
CEO - Requires permit issued by the Code Enforcement Officer
LPI - Requires permit issued by the Local Plumbing Inspector
Bureau - Requires permit issued by State of Maine Department of Conservation’s Bureau of Forestry

ABBREVIATIONS:

RP - Resource Protection
SR - Shoreland Residential
SB - Shoreland Business
CF I - Commercial Fisheries I
CF II - Commercial Fisheries II
MFMB - Mitchell Field Marine Business

FOOTNOTES: Land Use Table

*For further information on the * uses in land use chart see Section 15.

1. No - except grand-fathered properties.
2. Marine related services only. Retail stores limited to nine hundred (900) or less square feet in size.
3. No - except limited Commercial Fishing activities.
4. Functionally water-dependent and accessory to Commercial Fishing uses only.
5. Except when area is zoned for resource protection solely due to flood plain criteria in which case a permit is required from the PB.
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.
7. Primarily commercial fishing related use.
8. Home occupations that provide public restrooms and showers or serve food to the public require a CEO permit. All home occupations are subject to the provisions of Section 15.20 of the Shoreland Zoning Ordinance regardless of whether they are located within the Shoreland Zone.
9. Additions or expansions to existing Town Office Complex may be allowed with Planning Board approval.
10. Only as provided in Section 13.1.1. of the Shoreland Zoning Ordinance.
11. When a structure is accessory to both residential and non-residential uses, the more restrictive provisions of the ordinances shall apply.
12. May require site plan review approval. See Town of Harpswell Site Plan Review Ordinance.

13. Except for other allowed commercial uses listed in the Table that are allowed in the respective district.

14. Excluding bridges and other crossings not involving earthwork, in which case no permit is required.

15. Hunting is prohibited on all property at Mitchell Field that is owned by the Town of Harpswell.

16. At least forty-five percent (45%) of the gross leasable lot area within the district must be utilized for aquaculture, marinas, boat repair facilities, and/or functionally water-dependent uses as defined in the Definitions Addendum. Not more than fifteen percent (15%) of the gross leasable lot area in the district may be used for commercial or industrial uses that are not functionally water-dependent businesses, aquaculture, marinas, and/or boat repair facilities nor other marine-related businesses as defined in the Definitions Addendum provided that these uses may not be located within two hundred fifty (250) feet of the HAT of the coastal wetland. Marine-related business uses are allowed within the district provided that the limitations set forth above are met. The use of the pier and the causeway leading to the pier is limited to activities involving public access and recreation and activities related to and in support of functionally water-dependent uses and marine related businesses that are located within the Mitchell Field Marine Business District provided that the private use of these facilities does not unduly restrict reasonable public access to and use of the pier.

17. The limitation on the size of non-residential facilities for marine, scientific, or nature related purposes shall not apply in the Mitchell Field Business Districts if the Planning Board finds that the scale and location of the facility are consistent with the objectives of shoreland zoning and the Mitchell Field Master Plan.

18. Permits applications for non-commercial, private piers, docks or wharves with a maximum width of six (6) feet as measured parallel to the shoreline and which do not extend below the low water line shall be reviewed and issued by the Code Enforcement Officer. Non-commercial, private piers greater than six (6) feet wide as measured parallel to the shoreline or which extend below the low water line are prohibited.

19. Permits applications for commercial piers, docks or wharves with a maximum width of twelve (12) feet as measured parallel to the shoreline and which limit the length of the structure to the minimal amount necessary to provide access to the boats intended to use the facility shall be reviewed and issued by the Code Enforcement Officer. Permits for commercial piers greater than twelve (12) feet wide as measured parallel to the shoreline or which exceed the minimum length necessary to provide access to the boats intended to use the facility shall be reviewed and issued by the Planning Board.

20. Only as provided in Section 13.1.2. of the Shoreland Zoning Ordinance.
21. Organic fertilizer and composted manure may not be applied within twenty five (25) feet of the maximum high water line of a great pond, stream, tributary stream, HAT of the coastal wetland or the upland edge of a freshwater wetland as outlined in Section 15.21.1 of this ordinance.

**Citizen’s Note:** Land use activity adjacent to protected natural resources requires a permit from the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A.§ 480-C, as may be amended from time to time. Please see Code Enforcement Officer for more information.

**SECTION 15. LAND USE STANDARDS**

No developer, person, or group shall restrict the use of property in any Shoreland Zone, neither now nor in the future, that limits commercial fishing or its related uses, as a home occupation. (i.e. lobstering, dragging, claming, trap storage)

All land use activities within the Shoreland Zone shall conform to the following provisions, if applicable:

<table>
<thead>
<tr>
<th>15.1. Minimum Lot Standards Table</th>
<th>Minimum Lot Area (square feet)</th>
<th>Minimum Shore Frontage (feet)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Residential per dwelling unit</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Within the Shoreland Zone adjacent to Tidal Areas.</td>
<td>40,000</td>
<td>150</td>
</tr>
<tr>
<td><em>Note: See sliding scale regarding frontage in Section 15.1.3</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Within the Shoreland Zone adjacent to Non-Tidal Areas</td>
<td>40,000</td>
<td>200</td>
</tr>
<tr>
<td>3. Offshore Islands</td>
<td>40,000</td>
<td>150</td>
</tr>
<tr>
<td><strong>Commercial per principal structure</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Within the Shoreland Zone Adjacent to Tidal Areas Exclusive of Those Areas Zoned for Commercial Fisheries I and II and Mitchell Field Marine Business</td>
<td>40,000</td>
<td>200</td>
</tr>
<tr>
<td>2. Within the Shoreland Zone Adjacent to Tidal Areas Zoned for Commercial Fisheries I and II (for Commercial Uses Only)</td>
<td>NONE</td>
<td>NONE</td>
</tr>
<tr>
<td>3. Within the Shoreland Zone Adjacent to Tidal Areas Zoned Mitchell Field Marine Business District for all uses</td>
<td>20,000</td>
<td>150</td>
</tr>
<tr>
<td>4. Within the Shoreland Zone Adjacent to Non-Tidal Areas</td>
<td>60,000</td>
<td>300</td>
</tr>
<tr>
<td><strong>Public and Private Recreational Facilities</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Within the Shoreland Zone adjacent to Tidal and Non-Tidal areas</td>
<td>40,000</td>
<td>200</td>
</tr>
<tr>
<td><strong>Community Docks</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
1. Within the Shoreland Zone adjacent to Tidal and Non-Tidal Areas if improved with no structure other than the community dock

*Lot area must be sufficient, as determined by the Planning Board, to accommodate parking spaces for vehicles, vehicular circulation on the lot, loading and unloading areas, any float storage and any access ramp.

15.1.1. The following land shall not be included in the calculation of the area of a lot for the purposes of meeting minimum lot size or other density or dimensional requirements:

15.1.1.1 Land below the maximum high water line of a great pond, stream, or tributary stream,
15.1.1.2 Land below the HAT of a coastal wetland,
15.1.1.3 Land below the upland edge of a freshwater wetland with a contiguous area of more than twenty thousand (20,000) square feet,
15.1.1.4 Land which is part of a road, or a transportation right-of-way, or easement serving more than two (2) lots, except rights-of-way or easements used exclusively for pedestrian access, and
15.1.1.5 Land created by the filling or draining of a great pond, stream, tributary stream, or coastal or freshwater wetland.

15.1.2. 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.

15.1.3. Sliding Scale: Lot frontage in the Shoreland Zone is governed by the average shore frontage of three (3) lots to either side of the lot to be divided. Lots shall be either, not less than, one hundred (100) feet frontage or one hundred fifty (150) feet or greater of frontage.

A 200 - 299 ft. lot (frontage) surrounded by three (3) lots on either side, averaging one hundred forty nine (149) feet or less frontage, could be divided into lots with one hundred (100) feet minimum shore frontage. If surrounded by three (3) lots to either side with an average of one hundred fifty (150) feet frontage or greater, the lot could not be divided.

HENCE: If a parcel is surrounded by three (3) lots either side, averaging less than one hundred forty nine (149) feet frontage, lot can be divided into one hundred (100) feet frontage lots. If a parcel is surrounded by three (3) lots either side averaging greater than one hundred fifty (150) feet frontage, lot must be divided into one hundred fifty (150) feet frontage or greater lots.

15.1.4. The minimum width of any portion of any lot within one hundred (100) feet, horizontal distance, of the maximum high water line of a great pond, stream, tributary stream, HAT of the coastal wetland or upland edge of a freshwater wetland described in Section 3 of this Ordinance, shall be equal or greater than the shore frontage requirement for a lot with the proposed use.

15.1.5. 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 except in the Mitchell Field Marine Business District. In the Mitchell Field Marine Business District, the lot must conform to the minimum lot area requirement for each principal structure. In the Mitchell Field Marine Business District, the lot must conform to the minimum shore frontage requirement, however if there is more than one principal structure on a lot within two hundred fifty (250) feet of the HAT of the coastal wetland, the lot must meet the minimum shore frontage requirement for each principal structure.

15.2. Principal and Accessory Structures

Citizen’s Note: See Land Use Chart for proper permitting authority. Check definition of a structure.

15.2.1. Setbacks. All new principal and accessory structures shall be set back at least seventy-five (75) feet, horizontal distance, from the maximum high water line of a great pond, stream, tributary stream, HAT of the coastal wetland or the upland edge of a freshwater wetland described in Section 3 of this Ordinance, and twenty-five (25) feet from all other lot lines including a property line with any road, except as provided in subsection 15.2.1.1, 15.2.1.2 and 15.2.1.3.. In a Resource Protection District, the setback requirement shall be two hundred fifty (250) feet, horizontal distance, except for structures, roads, parking spaces or other related objects specifically allowed in that district in which case the setback requirements above shall apply.

Citizen's Note: See definition of water bodies Definitions Addendum.

15.2.1.1. The great pond, stream, tributary stream, coastal wetland or freshwater wetland setback provision shall neither apply to structures which require direct access to the water as an operational necessity, such as piers, docks, and retaining walls, nor to other functionally water-dependent uses or commercial fishing related structures, or marine-related businesses in the Mitchell Field Marine Business District.

15.2.1.2. For piers, docks, and wharves that do not serve as community docks, the sideline setback shall be twenty-five (25) feet. For piers, docks, and wharves that serve as community docks, the sideline setback shall be ten (10) feet for all parcels with shared access and twenty-five (25) feet for all parcels that do not have shared access to the pier, dock or wharf. The Code Enforcement Officer may permit the sideline setback to be reduced if the abutter(s) agrees in writing and it is duly recorded in Cumberland County Registry of Deeds.

15.2.1.3. On a nonconforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required great pond, stream, tributary stream, coastal wetland or freshwater wetland setbacks, and which an accessory structure does not already exist, 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 or 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.
15.2.1.4. Seawalls and/or retaining walls which are necessary to stabilize shoreline erosion shall not be required to meet the structure setback requirement; provided that the seawall or retaining wall is permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A.§ 480-C, as may be amended from time to time. Retaining walls that are not necessary for erosion control shall meet the structure setback requirement; provided, however, that low retaining walls and associated fill necessary for erosion control need not meet the structure setback requirement if the following conditions are met:

15.2.1.4.1. The site has been previously altered and an effective vegetated buffer does not exist;

15.2.1.4.2. The wall(s) is (are) at least twenty-five (25) feet, horizontal distance, from the maximum high-water line of a great pond, stream, tributary stream, HAT of the coastal wetland or upland edge of a freshwater wetland;

15.2.1.4.3. 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;

15.2.1.4.4. The total height of the wall(s), in the aggregate, is no more than 24 inches;

15.2.1.4.5. Retaining walls are located outside of the one hundred (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;

15.2.1.4.6. 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

15.2.1.4.7. A vegetated buffer area is established within twenty-five (25) feet, horizontal distance, of the maximum high-water line of a great pond, stream, tributary stream, HAT of the coastal wetland or upland edge of a freshwater wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:

15.2.1.4.7.1. 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;

15.2.1.4.7.2. Vegetative plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;

15.2.1.4.7.3. Only native species may be used to establish the buffer area;
15.2.1.4.7.4. A minimum buffer width of fifteen (15) feet, horizontal distance, is required, measured perpendicularly to the maximum high-water line, HAT or upland edge of a resource; and

15.2.1.4.7.5. A footpath not to exceed the standards set forth in Section 15.15.2.1 of this Ordinance may traverse the buffer.

15.2.1.5. 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 Code Enforcement Officer or Planning Board, as appropriate, 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.

15.2.1.6. In the Mitchell Field Marine Business District, all principal and accessory structures including parking and service areas and equipment or material storage areas shall be set back at least fifty (50) feet from the northern, eastern and southern boundaries of the Mitchell Field Business District.

15.2.2. Principal or accessory structures and expansions of existing structures shall not exceed thirty (30) feet in height. All expansions of principal and accessory structures that increase the footprint of the structure shall not exceed thirty (30) feet in height. For any principal or accessory structure existing as of March 10, 2007 that lawfully exceeds thirty (30) feet in height, such structure may be expanded without the need for a variance provided that (a) the expansion does not increase the footprint of the structure; and (b) the expansion does not exceed the greatest height of the existing structure. Expansions of non-conforming structures must comply with all other expansion limitations of this Ordinance. The Code Enforcement Officer shall review any proposed expansion of a structure and shall determine, in writing, whether the requirements of this subsection are met prior to the issuance of any permit. Any non-residential structure exceeding twenty-five hundred (2,500) square feet must apply for Site Plan Review. This subsection does not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.

The height of a structure shall be determined by using the vertical distance, as measured from halfway between the mean original grade at the downhill side of the structure and the mean original grade at the uphill side of the structure to the highest point of the structure, excluding chimneys, steeples, antennas and similar appurtenances which have no floor area. Notwithstanding the preceding sentence, cupolas or similar portions of a structure having no floor area and exceeding any of the following dimensions (a) a side wall of sixteen (16) square feet; (b) a side wall of four (4) feet in height; (c) sixteen (16) square feet of horizontal area; or (d) a twelve (12) pitch roof, shall be included in the measurement of the height of a structure.
If the measurement cannot be made from the original grade where the structure is to be located, the Code Enforcement Officer shall establish a reasonable approximation of original grade for the purposes of determining height.

15.2.3. The lowest floor elevation or opening of all building and structures including basements shall be elevated at least one foot above the elevation of the one hundred (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.

15.2.4. The total footprint area of all structures, driveways, parking lots, and other impermeable surfaces within the Shoreland Zone shall not exceed twenty percent (20%) of the lot or a portion thereof, located within the Shoreland Zone, including land area previously developed, except in the Shoreland Business, Mitchell Field Marine Business, and Commercial Fisheries I and II Districts. In the Shoreland Business District, impermeable surface coverage shall not exceed seventy percent (70%) for boat repair and construction facility, marina uses, and commercial fishing uses only; the twenty percent (20%) impermeable surface coverage limitation shall apply to all other uses that may occur in the Shoreland Business District. In the Commercial Fisheries I District and the Mitchell Field Marine Business District, impermeable surface coverage shall not exceed seventy percent (70%). In the Commercial Fisheries II District, impermeable surface coverage shall not exceed seventy percent (70%) for functionally water dependent or functionally water dependent accessory uses only; the twenty percent (20%) impermeable surface coverage limitation shall apply to all other uses that may occur in the CF II District.

15.2.5. Notwithstanding the requirements stated above, community shoreland access, 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 maximum high water line of a great pond, stream, tributary stream, HAT of the coastal wetland or upland edge of a freshwater wetland described in Section 3 of this Ordinance unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. § 480-C, as may be amended from time to time; and that the applicant demonstrates that no reasonable access alternative exists on the property.

15.2.6. During the construction or reconstruction of a single-family home, a property owner may place an accessory temporary living accommodation on the lot in conformance with this section. Prior to installing the accessory temporary living accommodation on the lot, the property owner must obtain a temporary certificate of compliance from the Code Enforcement Officer. The CEO shall issue the temporary certificate of compliance only if he/she finds that all of the provisions of this section have been met. The temporary certificate of compliance shall be for a period of not more than twelve (12) months. The owner may apply for up to two (2) twelve (12) month renewals of the temporary compliance permit and the CEO shall approve such renewals only if he/she finds that the property owner is in compliance with all of the provisions of this section.

The placement and use of the accessory temporary living accommodation shall conform to all of the following requirements:
15.2.6.1. The accessory temporary living accommodation shall be a travel trailer, recreational vehicle, tent, or other similar enclosure that is not permanently attached to the ground.

15.2.6.2. The temporary living accommodation shall have a maximum of three hundred (300) square feet of area that can be occupied.

15.2.6.3. The accommodation shall be used only for the temporary living quarters of the property owner and her/his immediate family while construction is in progress on the home.

15.2.6.4. The temporary living accommodation shall be located on the lot in full conformance with the shoreland and property line setbacks.

15.2.6.5. The temporary living accommodation shall not be located on any type of permanent foundation and if the accommodation is a travel trailer, recreational vehicle, or similar mobile enclosure with integral wheels, the wheels shall remain on the vehicle while it is on the lot.

15.2.6.6. The owner shall prepare a written sewage disposal plan describing the proposed method and location of provisions for sewage disposal. The plan must be approved by the local plumbing inspector. When disposal is off-site, written authorization from the receiving facility or land owner is required.

A property owner who has been issued a temporary certificate of compliance for the placement of an accessory temporary living accommodation on the lot shall remove the temporary living accommodation within fifteen (15) days of being notified by the CEO in writing that the use is not in compliance with the standards and/or that the temporary certificate of compliance has expired, or shall disconnect the unit from all permanent utilities and sewage disposal provisions within fifteen (15) days of receiving a certificate of compliance for the new or replacement home. Failure to remove the accessory temporary living accommodation or disconnect it from all permanent utilities and sewage disposal provisions as required shall constitute a violation of this Ordinance subject to the penalties described in Section 13.6 of the Basic Land Use Ordinance in accordance with Section 16. Administration.

15.3. Piers, Docks, Wharves, Bridges, And Other Structures And Uses Extending Over Or Below The Maximum High Water Line Of a Great Pond, Stream, Tributary Stream, HAT of the Coastal Wetland Or Within a Freshwater Wetland.

15.3.1. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.

15.3.2. The location shall not interfere with existing developed or natural beach areas.

15.3.3. The facility shall be located so as to minimize adverse affects on fisheries.

15.3.4. 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.

15.3.4.1. Non-commercial, private piers, docks and wharves shall have a maximum width of 6 feet and shall not extend below the low water line (not including ramps and floats).
15.3.4.2. Commercial piers, docks and wharves shall be limited to twelve (12) feet in width. The width of larger projects shall be justified by the applicant and approved by the Planning Board.

15.3.4.3. The maximum width of community docks is as set forth in Section 15.23 of this Ordinance.

15.3.5. No new structure shall be built on, over or abutting a pier, wharf, dock, or other structure extending beyond the maximum high water line of a great pond, stream, tributary stream, HAT of the coastal wetland or within a freshwater wetland described in Section 3 of this Ordinance. Commercial fishing structures requiring direct access to the water as an operational necessity are allowed.

15.3.6. No existing structure built on, over or abutting a pier, dock, wharf or other structure extending beyond the maximum high water line of a great pond, stream, tributary stream, HAT of the coastal wetland or within a freshwater wetland described in Section 3 of this Ordinance shall be converted to residential dwelling units in any district.

15.3.7. Except in the Commercial Fisheries I District, structures built on, over or abutting a pier, wharf, dock, or other structure extending beyond the maximum high water line of a great pond, stream, tributary stream, HAT of the coastal wetland or within a freshwater wetland described in Section 3 of this Ordinance shall not exceed twenty (20) feet in height above the pier, wharf, dock, or other structure.

Citizens Note: Permanent structures projecting into or over water bodies shall require a permit from the Department of Environmental protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. § 480-C, as may be amended from time to time, and from the Army Corp of Engineers.

15.3.8. No new wharf, pier, dock, and/or float shall be constructed on a lot shown on a recorded subdivision plan that has deeded rights of access to a wharf, pier, dock, and/or float; provided, however, that the Planning Board may authorize a new community dock within that subdivision pursuant to Section 15.23 of this Ordinance if the applicant can demonstrate that the new community dock will significantly improve access to a wharf, pier, dock, and/or float for at least one-third of the lots within the subdivision and protect natural resources from overdevelopment.

15.3.9. New permanent piers and docks on non-tidal waters shall not be allowed 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 pursuant to the Natural Resources Protection Act, 38 M.R.S.A. § 480-C, as may be amended from time to time.

15.4. Campgrounds shall conform to the minimum requirements imposed under State licensing procedures, Harpswell’s Site Plan Review Ordinance, and the following:

15.4.1. The total land area of the campground in square feet, not including roads and driveways, must equal the number of campsites times five thousand (5,000). Land below the
maximum high water line of a great pond, stream, tributary stream, HAT of the coastal wetland or within a freshwater wetland shall not be included in calculating total land area.

Campsites within the Shoreland Zone, either in whole or in part, shall contain at least five thousand (5,000) square feet. Campsites with shore frontage must have a minimum of fifty (50) feet of shore frontage.

Campsites located outside of the Shoreland Zone shall contain at least one thousand (1,000) square feet.

15.4.2. The areas intended for placement of a recreational vehicle, tent, or shelter, and utility buildings, or service buildings shall be set back a minimum of seventy-five (75) feet from the maximum high water line of a great pond, stream, tributary stream, HAT of the coastal wetland or the upland edge of a freshwater wetland described in section 3 of this Ordinance; and twenty-five (25) feet from campground property lines.

15.5. Individual Private Campsites. Individual private campsites not associated with campgrounds are allowed provided the following conditions are met:

15.5.1. One campsite per lot existing on the effective date of this ordinance, or forty thousand (40,000) square feet of lot area within the Shoreland Zone, whichever is less, may be permitted.

15.5.2. Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back seventy-five (75) feet, horizontal distance, from the maximum high water line of a great pond, stream, tributary stream, HAT of the coastal wetland or the upland edge of a freshwater wetland described in Section 3 of this Ordinance; and twenty-five (25) feet, horizontal distance, from any individual private campsite property line.

15.5.3. Only one Recreation Vehicle shall be allowed on a campsite. Recreational vehicles shall not be located on any type of permanent foundation except for a gravel pad, and no structure(s) except canopies shall be attached to the recreational vehicle.

15.5.4. 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 (1,000) square feet.

15.5.5. A written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite and must be approved by the local plumbing inspector. Where disposal is off-site, written authorization from the receiving facility or land owner is required.

15.5.6. An individual private campsite shall not be utilized for the placement of any recreational vehicle(s), tent(s), or similar shelter(s) for more than one hundred twenty (120) days in any calendar year. This one hundred twenty (120) day limitation applies to all individual private campsites whether or not they have been utilized prior to effective date of this amendment. Placement of any recreational vehicle(s), tent(s) or similar shelter(s) on an individual private campsite for more than one hundred twenty (120) days in any calendar year requires compliance with all requirements of this Ordinance applicable to a dwelling, including the installation of a subsurface wastewater disposal system in compliance with the Maine Subsurface Wastewater Disposal Rules. This Section does not prohibit the storage of an
unoccupied recreational vehicle, tent, or similar shelter on land other than an individual private
campsite.

15.5.7. No recreational vehicle, tent, or similar shelter may be occupied unless it is located: (1) in a campground allowed under Section 15.4; (2) on an individual private campsite allowed pursuant to Section 15.5; or (3) on the same lot as a dwelling and used for no more than one hundred twenty (120) days in a calendar year, by the residents of the dwelling or their guests.

15.6. Commercial and Industrial Uses. The following new commercial and industrial uses are prohibited within two hundred fifty (250) feet horizontal distance of the maximum high water line of a great pond, stream, tributary stream, HAT of the coastal wetland or the upland edge of a freshwater wetland described in Section 3 of this Ordinance; in the Mitchell Field Marine Business District and in any other portion of the Shoreland Zone:

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 except painting in boat building - boat repair facilities
6. Dry cleaning establishments
7. Electronic circuit assembly
8. Laundromats
9. Electro 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, boat repair facilities, and commercial fishing operations
11. Photographic processing
12. Printing

15.7. Parking Areas. This section applies when an area is developed for one thousand (1,000) square feet or more of parking.

15.7.1. Parking areas shall meet the Shoreland setback requirements for structures for the district in which such areas are located, except that:

15.7.1.1. The setback requirement for parking areas in the Commercial Fisheries I District may be reduced to no less than twenty-five (25) feet, horizontal distance, from the maximum high water line of a great pond, stream, tributary stream, HAT of the coastal wetland or the upland edge of a freshwater wetland described in Section 3 of this ordinance if the Code Enforcement Officer determines that no reasonable alternative exists, and

15.7.1.2. The setback requirements for parking areas serving public boat launching facilities, in districts other than the Commercial Fisheries I District may be reduced to no less than fifty (50) feet, horizontal distance, from the maximum high water line of a great pond, stream, tributary stream, HAT of the coastal or upland edge of a wetland described in Section 3 of this ordinance if the Code Enforcement Officer finds that no other reasonable alternative exists.
15.7.2. Parking areas shall be adequately sized for the proposed use and shall be designed to minimize runoff and erosion. Where feasible, runoff will be retained on site and prevented from flowing directly into a great pond, stream, tributary stream, coastal wetland or freshwater wetland.

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

15.8.1. Roads and driveways shall be set back at least seventy-five (75) feet, horizontal distance, from the maximum high water line of a great pond, stream, tributary stream, HAT of the coastal wetland or the upland edge of a freshwater wetland described in Section 3 of this Ordinance, unless no reasonable alternative exists as determined by the Code Enforcement Officer. If no other reasonable alternative exists, the Code Enforcement Officer may reduce the road and/or driveway setback requirement to 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 great pond, stream, tributary stream, coastal wetland or freshwater 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 great pond, stream, tributary stream, coastal wetland or freshwater wetland.

On slopes of greater than twenty percent (20%) the road and/or driveway setback shall be increased by ten (10) feet, horizontal distance, for each five percent (5%) increase in slope above twenty percent (20%). This paragraph shall neither apply to approaches to water crossings nor to roads or driveways that provide access to permitted structures, and facilities located nearer to the shoreline due to an operational necessity.

15.8.1.1. Section 15.8.1 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 docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of Section 15.8.1 except for that portion of the road or driveway necessary for direct access to the structure.

15.8.2. Existing public roads may be expanded within the legal road right-of-way regardless of its setback from a great pond, stream, tributary stream, coastal wetland or freshwater wetland described in Section 3 of this Ordinance.

15.8.3. 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 upon 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 maximum high-water line of a great pond, stream, tributary stream, HAT of the coastal wetland or upland edge of a freshwater wetland described in Section 3 of this Ordinance.

15.8.4. Road and driveway banks shall be no steeper than a fifty percent (50%) slope and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Subsection 15.16.
15.8.5. Road and driveway grades shall be no greater than ten percent (10%) except for short segments of less than two hundred (200) feet.

15.8.6. In order to prevent road and driveway surface drainage from directly entering a great pond, stream, tributary stream, coastal wetland or freshwater wetland, roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least fifty (50) feet, horizontal distance, plus two (2) times the average slope, in width between the outflow point of the ditch or culvert and the maximum high water line of a great pond, stream, tributary stream, HAT of the coastal wetland or upland edge of a freshwater wetland described in Section 3 of this Ordinance. Surface drainage that 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.

15.8.7. 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:

15.8.7.1. 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:

<table>
<thead>
<tr>
<th>Grade (Percent)</th>
<th>Spacing (Feet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-2</td>
<td>250</td>
</tr>
<tr>
<td>3-5</td>
<td>200-135</td>
</tr>
<tr>
<td>6-10</td>
<td>100-80</td>
</tr>
<tr>
<td>11-15</td>
<td>80-60</td>
</tr>
<tr>
<td>16-20</td>
<td>60-45</td>
</tr>
<tr>
<td>21+</td>
<td>40</td>
</tr>
</tbody>
</table>

15.8.7.2. Drainage dips may be used in place of ditch relief culverts only where the road grade is ten percent (10%) or less.
15.8.7.3. On sections having slopes greater than ten percent (10%), ditch relief culverts shall be placed at approximately a thirty (30) degree angle down slope from a line perpendicular to the centerline of the road or driveway.

15.8.7.4. 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.

15.8.8. 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.

15.9. Signs. The following provisions shall govern the use of signs in the Resource Protection, Shoreland Residential, Mitchell Field Marine Business, and Shoreland Business Districts, in addition to the Harpswell Sign Ordinance. The more stringent provisions shall apply. A permit must be obtained from the Code Enforcement Officer.

15.9.1. Display signs relating to a business or to goods and services sold on the premises shall be allowed, provided that such signs shall not exceed sixteen (16) square feet in area and shall not exceed two (2) signs per premises. Billboards and signs relating to goods or services not sold or rendered on the premises shall be prohibited.

15.9.2. Name signs shall be allowed, provided such signs shall not exceed two (2) signs per premise and shall not exceed twelve (12) square feet in the aggregate.

15.9.3. Residential users may display a single sign not over five (5) square feet in area relating to the sale of the premises.

15.9.4. 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.

15.9.5. Signs relating to public safety shall be allowed without restriction.

15.9.6. No sign shall extend higher than twenty (20) feet above the ground.

15.9.7. Signs may be illuminated only by shielded, non-flashing lights. In the Mitchell Field Business District, the shielding must prevent the light source from being seen from the water.

15.10. Storm Water Runoff

15.10.1. All new construction and development shall be designed to minimize storm water runoff from the site in excess of the natural pre-development 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 stormwater.

15.10.2. Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.
15.11. Subsurface Wastewater Disposal

15.11.1. All subsurface sewage disposal systems shall be permitted and installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules and the following:

15.11.1.1. 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 maximum high-water line of a great pond, stream, tributary stream, HAT of the coastal wetland or the upland edge of a freshwater wetland described in Section 3 of this Ordinance and

15.11.1.2. A holding tank is not allowed for a first-time residential use in the shoreland zone.

15.11.2. All new, replacement, renovated or expanded structures or uses generating waste, shall provide evidence of the type specified in 13.3.4. of the Basic Land Use Ordinance that an adequate wastewater disposal system can be constructed or that an adequate waste water disposal system already exists.

15.11.3. Existing use - continuation of use: The use of any legal system which exists on the effective date of this ordinance, or which had previously been approved for installation, may be continued without change except as may be specifically covered by the Maine State Plumbing Code or deemed necessary by the plumbing inspector, for the general safety and welfare of the occupants and the public.

15.11.4. Change in use - it shall be unlawful to make any change in the use of any system, or to erect, enlarge, or change the use of a structure that uses an existing system without the approval of the plumbing inspector and certification that such change does not result in any hazard to public health, safety, and welfare.

15.11.5. The minimum setback for new subsurface sewage disposal fields shall be not less than one hundred (100) horizontal feet from the maximum high-water line of a great pond, stream, tributary stream, HAT of the coastal wetland or the upland edge of a freshwater wetland described in Section 3 of this Ordinance. The minimum setback distances from a great pond, stream, tributary stream, coastal wetland or freshwater wetland described in Section 3 of this Ordinance for new subsurface sewage disposal fields shall not be reduced by variance.

15.11.6. Replacement systems shall meet the standards for replacement systems as contained in the Rules.

15.11.7. The owner of the proposed system may locate the system or components partially on property not owned or controlled by the owner of the system, provided that the owner of the property where the system is to be located executes an easement in perpetuity for the construction, operation, replacement, and maintenance of the system, giving the system’s owner authorization to cross any land or right-of-way between the two parcels. The easement shall be filed and cross-referenced in the Registry of Deeds and the Codes Enforcement Office prior to issuance of a disposal system permit. The easement shall provide sufficient buffer around the disposal field and fill material extensions for future replacement and maintenance of the system.
15.12. Utilities and Essential Services

15.12.1. Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors and above ground facilities must be located so as to avoid crossing open areas and scenic views as identified in the Comprehensive Plan.

15.12.2. The installation of essential services other than road side distribution lines is not allowed in a Resource Protection Zone, 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.

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

15.12.4. Damaged or destroyed public utility distribution and transmission lines, towers, and related equipment may be replaced without a permit. When replacement does occur, the damaged or destroyed public utility line, towers, and related equipment shall be removed within one (1) year.

15.12.5. Utilities in the Mitchell Field Marine Business District shall be installed underground unless the Planning Board finds as part of a subdivision or site plan review that underground installation is not feasible due to site or soil conditions or the nature of the utility.

15.13. Agriculture

15.13.1. All spreading or disposal 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. §§ 4201-4209, as may be amended from time to time).

15.13.2 Manure shall not be stored or stockpiled within one (100) feet horizontal distance of the maximum high water line of a great pond, stream, tributary stream, HAT of the coastal wetland or the upland edge of a freshwater wetland described in Section 3 of this Ordinance. All manure storage areas within the Shoreland Zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated stormwater.

15.13.3. New agricultural activities, not in existence before adoption of this Ordinance involving tillage of soil greater than forty thousand (40,000) square feet in surface area, or the spreading, disposal or storage of manure within the Shoreland Zone shall require a Soil and Water Conservation Plan to be filed with the Planning Board. Non-conformance with the provisions of said plan shall be considered a violation of this Ordinance.
Citizens Note: Assistance in preparing a soil and water conservation plan may be available through the Cumberland County Soil and Water Conservation District office.

15.13.4. There shall be no new tilling of soil within seventy-five (75) feet, horizontal distance, from a great pond, stream, tributary stream or coastal wetland; or within twenty-five (25) feet, horizontal distance, of the upland edge of a freshwater wetland described in Section 3 of this Ordinance. Operations in existence on the effective date of this ordinance and not in conformance with this provision may be maintained.

15.13.5. Newly established livestock grazing areas shall not be permitted within seventy-five (75) feet, horizontal distance, of a great pond, stream, tributary stream, and coastal wetland; within twenty-five (25) feet, horizontal distance, of a freshwater wetland described in Section 3 of this ordinance. Livestock grazing associated with on going 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.


15.15. Clearing or Removal of Vegetation for Activities other than Timber Harvesting

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

15.15.2. Except in areas described in Section 15.15.1 and except to allow for the development of permitted uses, within a strip of land extending seventy-five (75) feet, horizontal distance, from the normal high water line of a great pond, stream, tributary stream, HAT of the coastal wetland or the upland edge of a freshwater wetland described in Section 3 of this Ordinance, a buffer strip of vegetation shall be preserved as follows:

15.15.2.1. There shall be no cleared opening greater than two hundred fifty (250) square feet in the forest canopy (or existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree crown. However, a footpath not to exceed six (6) feet in width as measured between tree trunks, and/or shrub stems is permitted provided that a cleared line of sight to the water through the buffer is not created.

15.15.2.2. Selective cutting of trees within the buffer strip is allowed provided that a well distributed stand of trees and other natural vegetation, including existing ground cover, shall be maintained. For the purposes of this section a "well-distributed stand of trees" adjacent to a water body, tributary stream, or a wetland described in Section 3 of this Ordinance, shall be defined as maintaining a rating score of sixteen (16) or more in any twenty-five by fifty (25x50) foot square area (1,250 square feet) as determined by the following rating system:
Diameter of Tree at 4-1/2 feet Above Ground Level (inches) | Points
---|---
2 - <4" | 1
4 - <8" | 2
8 - <12” | 4
12” or greater | 8

The following shall govern in applying this point system:

15.15.2.2.1. The twenty-five (25) foot by fifty (50) foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;

15.15.2.2.2. Each successive plot must be adjacent to, but not overlap a previous plot;

15.15.2.2.3. Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this Ordinance;

15.15.2.2.4. Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this Ordinance;

15.15.2.2.5. Where conditions permit, no more than fifty percent (50%) of the points on any twenty-five (25) foot by fifty (50) foot rectangular area may consist of trees greater than twelve (12) inches in diameter.

For the purposes of Section 15.15.2.2, “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 twenty-five (25) foot by fifty (50) foot rectangle area. If five (5) saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until five (5) saplings have been recruited into the plot.

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

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 this section.

Pruning of dead tree branches on the bottom one-third (1/3) of trees is permitted.

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.
Alternative plans in compliance with State of Maine Laws, developed by a licensed Maine Forester, may be submitted to the Planning Board for approval.

The provisions contained in paragraph 2 above do 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.

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

In no event shall cleared opening for development, including but not limited to, principal and accessory structures, driveways and sewage disposal areas, exceed in the aggregate, twenty-five percent (25%) of the lot area or ten thousand (10,000) square feet, whichever is greater, including land previously developed. This provision shall not apply to the Commercial Fisheries I and II Districts and Shoreland Business District when for a commercial use.

An alternative plan in accordance with Maine laws signed by a licensed Maine Forester may be presented to the Planning Board for approval.

15.15.4. Cleared openings legally in existence on the effective date of this ordinance may be maintained, but shall not be enlarged, except as permitted by this ordinance.

15.15.5. Fields which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of this section.

15.15.6. The clearing or removal of vegetation in the Commercial Fishing I and II Districts within the buffer strip may be allowed, provided that the clearing or removal of vegetation is necessary for a principal commercial fishing use located on the parcel and the primary income for the landowner or lessee is derived from the same principal commercial fishing use.

15.16. Earthmoving, Erosion, and Sedimentation Control

15.16.1. All activities that require a permit and involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions shall 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:

15.16.1.1. Mulching and re-vegetation of disturbed soil.

15.16.1.2. Temporary runoff control features such as hay bales, silt fencing, or diversion ditches.

15.16.1.3. Permanent stabilization structures such as retaining walls or riprap. Permanent stabilization structures permitted by this section must be approved in advance, in writing,
by the Code Enforcement Officer and shall be no larger than necessary to stabilize the area.

No retaining wall shall be approved if there is an alternative method of stabilization available.

**Citizens Note:** The above does not apply to normal maintenance of existing private roads and driveways. Soil erosion and sedimentation of watercourses and water bodies may be minimized by an active program meeting the requirements of the “Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices”, dated March 1991. A copy is on file in the Code Enforcement Office. Additional copies may be obtained from the Maine Dept. of Environmental Protection or the Cumberland County Soil and Water Conservation District.

15.16.2. In order to create the least potential for erosion, development should 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.

15.16.3. 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.

15.16.4. Any exposed ground area shall be temporarily stabilized by use of riprap, sod, seed, and mulch, or other effective measures. In all cases permanent stabilization shall occur within one (1) year of the initial date of exposure. In addition:

15.16.4.1. 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.

15.16.4.2. Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.

15.16.4.3. 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.

15.16.5. Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainage ways shall be designed and constructed in order to carry water from a twenty-five (25) year storm or greater, and shall be stabilized with vegetation or lined with riprap.

15.17. **Soils.** All land uses shall be located on or upon soils in which 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, on, 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 in an on-site investigation and be prepared by state-certified professionals. Certified persons may include Maine Certified Soil Scientists, Maine Registered Professional Engineers, and Maine State Certified Geologists. The report shall include an 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 that the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist.

15.18. Water Quality. No activity shall deposit on or into the ground or discharge to the water 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 a great pond, stream, tributary stream, coastal wetland or freshwater wetland,

No activity shall locate, store, discharge or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity, or temperature that run off, seep, percolate, or wash into surface or ground waters so as to contaminate, pollute, or harm such waters or cause nuisances.

15.19. Archeological and Historic Sites. All proposed land use activities shall be designed to protect archeological and historic sites that have been identified in the Town’s Comprehensive Plan, or by the Maine Historic Preservation Commission or the National Park Service. Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or determined by the Maine Historic Preservation Commission to be eligible to be listed on, the National Register of Historic Places shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment at least twenty (20) business days prior to action being taken by the applicable permitting authority; provided, however, that the Code Enforcement Officer may, in the event of an emergency as determined by the Code Enforcement Officer, take appropriate action to allow only such limited land use activity as is necessary to protect the public health, safety and welfare in order to cure the emergency situation. The Town permitting authority shall consider comments received from the Commission prior to rendering a decision on the application.

15.20. Home Occupations. Home occupations are allowed in all zoning districts. Those home occupations that provide public restrooms or showers or that serve food to the public need a permit from the Code Enforcement Officer. In all cases, the home occupation will be in compliance with the State of Maine Subsurface Wastewater Disposal Rules. Except for home occupations related to commercial fishing, all home occupations, regardless of whether they are located within the Shoreland Zone, are subject to the performance standards of this section.

15.20.1. Any home occupation that involves a prohibited activity or use listed in Section 15.6 of this ordinance shall be prohibited.

15.20.2. A home occupation shall be accessory to a residential use and clearly incidental and secondary to the residential use of the dwelling unit.

15.20.3. Except for family and group day care homes, and bed and breakfast home occupations, no home occupation shall be located in more than one structure nor shall any one or more home occupation utilize more than twenty-five (25%) of the gross floor area of the dwelling (excluding basement floor areas) if located in the dwelling or more than nine hundred (900) square feet of gross floor area of the accessory structure if located in an accessory structure.
15.20.4. Any home occupation must be carried on by a resident or occupants of the dwelling unit. In addition to the resident or occupants of the dwelling unit, no more than two (2) full-time employees, or part-time employees’ equivalent to two (2) full-time employees, may be employed in the home occupation. In Resource Protection districts within the Shoreland Zone, no more than one (1) full-time employee, or that number of part-time employees required to do the work of one (1) full-time employee, may be employed in the home occupation.

15.20.5. A home occupation shall not create a nuisance through generation of objectionable conditions such as noise, smoke, dust, odors, accumulation of animal waste, glare, or other nuisance conditions.

15.20.6. In addition to the off-street parking provided to meet the normal requirements of the dwelling, adequate off-street parking shall be provided for the vehicles of each employee and the maximum number of users the home occupation may attract during peak operating hours. Parking areas beyond those needed for the residential use shall be designed to minimize runoff and erosion. Where feasible runoff will be retained on site and prevented from flowing directly onto a neighboring property or into a water body.

15.20.7. A home occupation shall not generate substantially greater traffic volumes than would normally be expected in the neighborhood.

15.20.8. A home occupation may not generate special or hazardous waste in amounts larger than those normally associated with the residential use of the property.

15.20.9. A home occupation shall be compatible with the residential use of the property and surrounding residential uses.

15.20.10. Except for home occupations related to commercial fishing, Planning Board review and approval is required for home occupations in a Resource Protection District unless the home occupation:
   a) is carried on entirely within the residential dwelling unit on the property,
   b) has no employees other than the occupants of the dwelling unit,
   c) has no retail sales,
   d) generates no additional traffic than would normally be associated with the residential use of the property, and
   e) generates no special or hazardous wastes, as defined under Maine law.

15.21. Fertilizer Use

The use of fertilizers is regulated by the Outdoor Pesticides Control and Fertilizer Use Ordinance.

15.22. "In-Law" Apartments. An apartment for a relative related by blood, marriage or adoption to the record owner(s) of the property may be added to any dwelling unit provided that (a) the property is owner-occupied; (b) a building permit is obtained; (c) all of the requirements of this Ordinance, with the exception of shore frontage, road frontage, and minimum lot size, are met; and (d) all requirements of the Maine Subsurface Wastewater Disposal Rules in accordance with 22 M.R.S.A. § 42, as may be amended from time to time, are met. The immediate removal of the “in-law” apartment shall be required upon discontinued use or occupation of the “in-law”
apartment by the above-qualified relative of the record owner(s). The record owner(s) shall be responsible for informing the Code Enforcement Office when such use or occupation is discontinued. The record owner(s) shall annually register with the Code Enforcement Officer the legal name, mailing address and relationship to the record owner(s) of the relative occupying the “in-law” apartment and shall maintain a certificate of compliance with the Code Enforcement Officer. The Code Enforcement Officer shall have the right to inspect all “in-law” apartments to ensure compliance with this section.

15.23. Community Piers, Docks and Wharves

15.23.1. Community piers, docks and wharves shall have a maximum width of 6 feet and shall not extend below the mean low water mark (not including ramps and floats). The proposed community pier, dock or wharf shall not otherwise prohibit or unreasonably impede legitimate passage along a beach or through navigation over the waters for recreational or aquacultural purposes.

15.23.2. For community piers, docks, and wharves located wholly within a subdivision, the sideline setbacks shall be ten (10) feet. For community piers, docks and wharves that abut a parcel located outside of the subdivision, the sideline setback from that adjoining parcel shall be increased to twenty-five (25) feet. The Planning Board may permit the sideline setback to be reduced if the abutter(s) agree in writing and it is duly recorded in Cumberland County Registry of Deeds.

15.23.3. The applicant shall provide sufficient legal documentation to demonstrate right, title or interest in the location of the community pier, dock or wharf and that the community pier, dock or wharf will remain as a community pier, dock or wharf for the life of any such community pier, dock or wharf. The applicant shall submit to the Planning Board the proposed easement deed or declaration of protective covenants demonstrating that permanent access and maintenance rights shall be granted to the parties sharing the use of the community pier, dock or wharf, which shall be reviewed by the Town Attorney as to form. Upon approval by the Planning Board, the easement deed or declaration of protective covenants shall be recorded in the Cumberland County Registry of Deeds prior to the issuance of any building permit for the community pier, dock or wharf.

15.23.4. An area where the float(s), if any, will be stored shall be designated on the plan.

15.23.5. Parking areas shall be adequately sized for the number of lots to be served by the community pier, dock or wharf, with a minimum of one parking space for every three non-common open space lots within the subdivision to be served by the community pier, dock or wharf. Parking areas shall be designed to minimize runoff and erosion. Where feasible, runoff will be retained on site and prevented from flowing directly into the coastal wetland, stream, tributary stream, or freshwater wetland.

15.23.6. The design and construction shall not interfere with recreational intertidal lateral access.

15.23.7. The landward approach to a community pier, dock, or wharf shall minimize harm to vegetation on a coastal wetland, freshwater wetland or coastal bank.
15.24. **Swimming Pools.** All swimming pools, as that term is defined in 22 M.R.S.A. § 1631(2), shall comply with the fence enclosure requirements set forth in 22 M.R.S.A. §§ 1631-1632, as may be amended from time to time. Failure to do so shall constitute a violation of this Ordinance.

**SECTION 16. ADMINISTRATION**

This Ordinance shall be administered and enforced in accordance with Sections 12, 13, and 14 of the Town's Basic Land Use Ordinance, as may be amended from time to time, and the Definitions Addendum, as may be amended from time to time.
**HARPSWELL SIGN ORDINANCE**

**Effective Date**
March 22, 2010
Amended March 14, 2015

**Table of Contents**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Preamble and Purpose</td>
<td>2</td>
</tr>
<tr>
<td>2</td>
<td>Definitions</td>
<td>2</td>
</tr>
<tr>
<td>3</td>
<td>Regulations</td>
<td>4</td>
</tr>
<tr>
<td>3.6</td>
<td>Signs requiring permits</td>
<td>4</td>
</tr>
<tr>
<td>3.6.1</td>
<td>Official Business Directional Signs</td>
<td>4</td>
</tr>
<tr>
<td>3.6.2</td>
<td>Display Signs</td>
<td>4</td>
</tr>
<tr>
<td>3.6.3</td>
<td>Illuminated Signs</td>
<td>4</td>
</tr>
<tr>
<td>3.6.4</td>
<td>Name Signs</td>
<td>5</td>
</tr>
<tr>
<td>3.6.5</td>
<td>Service Club Signs</td>
<td>5</td>
</tr>
<tr>
<td>3.6.6</td>
<td>Approach Signs</td>
<td>5</td>
</tr>
<tr>
<td>3.6.7</td>
<td>Directory Signs</td>
<td>5</td>
</tr>
<tr>
<td>3.7</td>
<td>Signs exempt from permits</td>
<td>5</td>
</tr>
<tr>
<td>3.7.1</td>
<td>Real Estate Signs</td>
<td>5</td>
</tr>
<tr>
<td>3.7.2</td>
<td>For Sale Signs</td>
<td>6</td>
</tr>
<tr>
<td>3.7.3</td>
<td>Temporary Event Signs</td>
<td>6</td>
</tr>
<tr>
<td>3.7.4</td>
<td>Religious Service/Civic Organization Meeting Signs</td>
<td>6</td>
</tr>
<tr>
<td>3.7.5</td>
<td>Signs Relating to Trespassing and Hunting</td>
<td>6</td>
</tr>
<tr>
<td>3.7.6</td>
<td>Interior Window Signs</td>
<td>6</td>
</tr>
<tr>
<td>4</td>
<td>Standards</td>
<td>6</td>
</tr>
<tr>
<td>5</td>
<td>Severability</td>
<td>6</td>
</tr>
<tr>
<td>6</td>
<td>Enforcement</td>
<td>7</td>
</tr>
<tr>
<td>7</td>
<td>Miscellaneous Sign and Administrative Appeals</td>
<td>8</td>
</tr>
<tr>
<td>8</td>
<td>Conflicts with Other Ordinances</td>
<td>9</td>
</tr>
<tr>
<td>9</td>
<td>Authority</td>
<td>9</td>
</tr>
<tr>
<td>10</td>
<td>Amendments</td>
<td>9</td>
</tr>
<tr>
<td>11</td>
<td>Effective Date</td>
<td>9</td>
</tr>
</tbody>
</table>
1.0 Preamble and Purpose
It is the intent of this ordinance to reduce roadside hazards and to provide for the safety of the motoring public and pedestrians and to preserve Harpswell’s unique scenic beauty and rural character while providing information and advertising about the goods, services and other attractions available in the Town of Harpswell.

2.0 Definitions

Approach sign is any sign that advertises a business or other entity whose principal building, or point of interest, is located on a private road more than 1000 ft from the nearest public road or is not visible to traffic from the nearest public road.

Business refers to any commercial, retail, wholesale, manufacturing, educational camping or amusement business located on any public or private road.

Directional Signs are signs which provide only directional information.

Directory Sign refers to a common header-style sign unit, which may include the location name as a header, as well as individual Display Signs all on one sign unit.

Display Sign is any painted, printed or stenciled advertising device, whether erected on a frame structure or mounted or painted on a building, conveying a message promoting a business enterprise of any kind.

Entity is any business, organization, institution or scenic attraction.

Illuminated Sign is any lighted sign with either exterior or integral illumination.

Maximum Dimension shall mean the longer of either height or width, or maximum perimeter if a sign has more than three visible sides.

Municipal Officers are the members of the Board of Selectmen.

Name Sign is a sign identifying the premises of an entity or a building under construction by a contractor.

Official Business Directional Sign means a sign erected and maintained in accordance with 23 M.R.S.A. §§ 1901-1925, as may be amended from time to time to indicate to the traveling public the route and distance to public accommodations, facilities, commercial services for the traveling public and points of scenic, historical, cultural, recreational, educational and religious interest. Other information may be displayed by means of logos authorized pursuant to 23 M.R.S.A. § 1910, as may be amended from time to time.
**Private Road** refers to a road that is privately owned, built and maintained, but not including a driveway, intended to carry motor vehicles, whether joining a public road or not, any part of which has land contiguous to it visible from a public road.

**Public Road** refers to any “public easement” or “town way,” as those terms are defined in 23 M.R.S.A. § 3021, as may be amended from time to time, intended to carry motor vehicles.

**Sign** means any structure, display, logo, device or representation which is designed or used to advertise or call attention to any thing, person, business, activity, or place and is clearly visible from any road. It does not include the flag, pennant or insignia of any nation, state or town, or a flag that only states that the business or other entity is open with no other text on it and that has a maximum dimension of six feet.

**Sign Area** shall be determined as the product of the maximum width and maximum height of the display portion of the sign and shall not include the mounting structure or frame. If a sign has two sides, only the larger side of the sign shall be counted when determining the size of a sign. If a sign has more than two visible sides, all visible sides shall be counted when determining the size of a sign. In cases where lettering is attached and/or freestanding, or if copy is painted directly on a building, the square footage of a sign shall be calculated by utilizing the proportions of a rectangle which would encompass all portions of the lettering and graphics; the area of this rectangle will be the square footage of the sign. A two-sided sign is considered to be one sign and a directory sign on one unit is considered to be one sign.

**Window Sign** is any sign that is affixed to or within the interior of a window with its message visible to the outside of the window surface.
3.0 Regulations

3.1 No new, additional or enlarged sign shall be erected adjacent to any public or private road within the Town of Harpswell except as provided in Section 3.6 and 3.7.

3.2 No sign shall be located so that it obstructs the vision of motorists, as determined by the Code Enforcement Officer.

3.3 Except as provided in Section 3.4, all non-conforming signs maintained along any public or private road that are visible from a public road and existing as of the effective date of this ordinance shall be either (a) removed by the owner no later then December 31, 2014, or (b) brought into compliance with this ordinance no later than December 31, 2014. Signs that were in conformance with the ordinance in effect immediately prior to the effective date of this ordinance in all respects except for the fact that a required sign permit was not obtained, but that have become nonconforming as of the effective date of this ordinance by virtue of the adoption of this ordinance, shall be allowed to remain in place; provided, however, that the sign owner must seek and obtain the required sign permit from the Code Enforcement Officer no later than June 1, 2010.

3.4 Existing signs that were in place prior to January 1, 1970 shall not be affected by this ordinance; provided, however that such signs must be registered with the Code Enforcement Office prior to April 1, 2012 in order to remain unaffected by this ordinance. There shall be no fee for registration.

3.5 No person, firm or corporation shall erect or place any sign described in Section 3.6 without first obtaining a permit from the Code Enforcement Officer. The permit fee shall be an amount as established by the Board of Selectmen from time to time.

3.6 Signs Requiring Permits. The following types of signs require a permit in advance from the Code Enforcement Officer for use in the Town of Harpswell:

3.6.1 Official Business Directional Signs. Such signs shall be uniform in size and type of lettering and shall conform to the following specifications: width, 48 inches; height, 12 inches; letter height at least 4 inches. The sign shall be of a design in conformity with Maine Department of Transportation regulations. Directional information only shall be provided on each sign.

3.6.2 Display Signs. Such signs shall not exceed two per premises or one sign facing in each direction from which a vehicle may approach, whichever is greater, and 32 sq. ft. in total aggregate area, with the maximum dimension not over 16 ft. Such display signs shall be displayed at the entity’s location.

3.6.3 Illuminated Signs. All illuminated signs shall have lights of such intensity and located in such manner that they are not a hazard to motorists’
night vision or objectionable to adjacent homeowners. Flashing, rotating, animated or changing digital lighting is prohibited.

3.6.4 **Name Signs.** Name signs are allowed to identify the premises of each entity or building under construction by a contractor. Such sign shall not exceed two (2) signs per premise and twelve (12) square feet in the aggregate.

3.6.5 **Service Club Signs.** Each service club and fraternal organization may provide and place a single sign conforming to the requirements of Section 3.6.1 above.

3.6.6 **Approach Signs.** Any entity whose principal building, or a point of interest, which is located on a private road more than 1,000 feet from the nearest public road, or as determined by the Code Enforcement Officer, not fully visible to traffic on the public road, may erect no more than two Approach signs with a total surface area not to exceed 32 square feet. These signs are to be located outside the public right-of-way limits within 300 feet of the junction of the public and private roads.

3.6.7 **Directory Signs.** For those properties where more than one entity exists, one directory sign shall be used which provides for multiple entities. For the purposes of this section, such a directory sign may identify or advertise more than one entity at the same location, structure or group of structures, sharing a common point of access. The following conditions apply:

3.6.7.1 A single header framework or mounting structure may be placed, with a single, display sign allowed for each entity. Such a directory common header sign may include the location name as well as the individual signs, all on one sign unit. A directory sign shall not exceed 40 square feet and the longest dimension shall not be greater than 10 feet.

3.6.7.2 The directory “common header” or location area part of sign unit shall not exceed 16 sq. ft. per side.

3.6.7.3 Extra signage shall not be placed along the roadside separate and apart from the directory sign.

3.7 **Signs Exempt from Permits.** The following types of signs are approved for use without the need for a permit in the Town of Harpswell:

3.7.1 **Real Estate Signs.** A single freestanding sign not to exceed 5 square feet or a single wall sign not to exceed 3 square feet relating to the sale, rental, or lease of a premise may be displayed on the premise which is available for sale, rent, or lease. If a premise for sale is not visible from a public road, one Real Estate Sign is allowed if it conforms to the location requirements of Approach Signs in Section 3.6.6.
3.7.2 **For Sale Signs** Residences may display a single sign, not over 4 square feet in area, relating to the good or services, belonging to the residence owner or tenant, that are for sale on the premises, if such sale does not constitute a business, or home occupation. Examples of sales falling under this provision are the sale of a used vehicle, the sale of a used appliance, a yard sale, or other occasional sales.

3.7.3 **Temporary Event Signs.** Temporary event signs announcing public and semi-public occasional events shall not exceed 32 square feet. Such signs shall be displayed not more than 2 weeks before the event and shall be removed with 3 days after the event. Temporary event signs shall be free of any other advertisement. Signs established more than 2 weeks prior to the announced event shall be deemed unlawful and are subject to removal under Section 6.3.

3.7.4 **Religious Service/Civic Organization Meetings Signs.** A religious or civic organization may erect no more than 4 signs showing the place and time of services or meetings to be held in Harpswell. No such sign shall exceed four square feet.

3.7.5 **Signs relating to Trespassing and Hunting.** 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.

3.7.6 **Interior Window Signs** that indicate opened, closed, hours of operation, or the name(s) of credit or charge institutions.

**4.0 Standards**

The following standards apply to all new signs in the Town of Harpswell.

4.1 No sign shall be placed to exceed 20 feet in height as measured from original grade, except when placed on buildings in which case they may not exceed 25 feet in height as measured from original grade.

4.2 Roof Signs shall not extend more than 10 feet above the roof line.

4.3 All signs shall be setback a minimum of five (5) feet from the edge of the traveled way of any public or private road.

**5.0 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 this ordinance.
6.0 Enforcement

6.1 It shall be the duty of the Code Enforcement Officer to administer and enforce the provisions of this ordinance.

6.2 Any person, including but not limited to a landowner, a landowner's agent, or contractor who orders or conducts any activity in violation of this ordinance shall be penalized in accordance with 30-A, M.R.S.A. § 4452, as may be amended from time to time. For purposes of this Section, each day that a violation continues shall be considered a separate offense.

6.2.1 For Purposes of this Section, each day that a violation continues shall be considered a separate offense.

6.2.2 If the Code Enforcement Officer finds that provisions of the Town’s sign ordinance are being violated, he or she shall notify personally and in writing, if necessary by certified mail return receipt requested, the person responsible for such violation indicating the nature of the violation, and ordering the action necessary to correct it. He or she shall order the discontinuance of illegal use of land, structures, or work being done, removal of illegal structures, or of additions, alterations, or structural changes thereto; discontinuance of any illegal work being done or nuisance conditions; or shall take any other action authorized by this Article to ensure compliance with or to prevent violation of the provisions of the Town’s land use ordinances. A copy of such notice shall be submitted to the Board of Selectmen and shall be maintained as a permanent record.

6.2.3 When notification and penalties for actions in violation of the Town’s sign ordinance do not result in the correction or abatement of the violation or nuisance condition, the Code Enforcement Officer shall advise the Board of Selectmen, who may institute any and all actions and proceedings either legal or equitable, to correct the violation, including seeking injunctions of violations, that may be appropriate or necessary for the enforcement of the provisions of the Town’s land use ordinances in the name of the Town. The Board of Selectmen is authorized to enter into administrative consent agreements for the purpose of eliminating violations of the Town’s sign ordinance and recovering fines with Court action. Such agreements shall not allow an illegal sign to continue unless there is clear and convincing evidence that the illegal sign was erected as a direct result of erroneous advice given by an authorized Town official and there is no evidence that the owner acted in bad faith, or unless the removal of the sign will result in a threat or hazard to public health and safety or will result in substantial environmental damage.

6.2.4 In addition to penalties provided herein, the Town may bring an action in the Superior Court or District Court to enjoin violators of the Town’s land use
ordinances, for collection of penalties, and for such other relief as may be provided by law.

6.3 Removal of Unlawful Signs. The owner of a sign unlawfully erected or maintained after the effective date of this ordinance shall be in violation of this ordinance until the sign is removed. The owner of the sign shall remove the sign within 30 days of receipt of a notice to remove, sent by certified mail, return receipt requested, by the Code Enforcement Officer. If the identity of such owner is not known or reasonably ascertainable by the Code Enforcement Officer, 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 Town, may seek a court order to remove the sign. All removed signs shall be held by the Town for a period of 30 days before they are disposed of.

6.3.1 Removal of Signs from a Public Road. Notwithstanding the notice-to-remove provisions of this Section, the Code Enforcement Officer shall have the authority to immediately remove signs in the public right of way that are deemed by the Code Enforcement Officer or the Road Commissioner to constitute a traffic hazard or impede snow removal. In such cases, notification may be after the fact. Notice-of-removal shall be sent by certified, return receipt requested, by the Code Enforcement Officer. All removed signs shall be held at the Code Enforcement Office for a period of 30 days before they are disposed of.

6.4 Nothing permitted or outlined herein shall be construed to relieve the proposed sign owner from statutory licensing or permit requirements of the State of Maine Department of Transportation prior to erection of any sign permitted under this ordinance.

Section 7.0. Miscellaneous Sign and Administrative Appeals
7.1 Miscellaneous Sign Appeals - The Board of Appeals shall grant a miscellaneous sign appeal if the applicant demonstrates that all of the following requirements are met:

(1) That the entity in question cannot reasonably convey information or advertising about the goods, services or other attractions associated with that entity if the setback or size requirements of this ordinance are applied to the proposed sign; and

(2) That the need for a miscellaneous sign appeal is due to the unique circumstances of the property; and

(3) No other feasible alternative is available to the applicant.

The Code Enforcement Officer shall keep a complete written record of all miscellaneous sign appeals granted or denied.

7.2 Administrative Appeals – Separate and distinct from miscellaneous sign appeals, the Board of Appeals has the power and duty to hear and decide administrative appeals, on a de novo basis, where it is alleged that there is an error in any order, requirement, decision or determination made by the Code Enforcement Officer in the administration
or enforcement of this ordinance. Such appeal shall be taken within forty (40) days of
the date of the decision appealed from, and not otherwise. 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 the decision of the Code
Enforcement Officer being appealed from; the specific provisions of the
ordinance relating to the decision that is alleged to be in error, and what
relief is requested.

(2) A sketch drawn to scale showing lot lines, location of existing signs and
structures and other physical features of the lot and surrounding area
pertinent to the relief sought.

Upon being notified of an administrative appeal, the Code Enforcement Officer shall
transmit to the Board of Appeals all the papers constituting the record of the decision
appealed from. The Board of Appeals shall hold a public hearing on the appeal within
thirty-five (35) days of its receipt of an appeal request.

Section 8.0. 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 9.0. Authority
This ordinance is adopted under powers granted to the town by 30-A M.R.S.A. § 3001, as
may be amended from time to time.

Section 10.0. Amendments
Amendments may be made by a majority vote of the Town at any Harpswell Town
Meeting and shall take effect upon enactment unless otherwise specified.

Section 11.0. Effective Date
This ordinance shall become effective upon its adoption and repeals and replaces the
Town of Harpswell Sign Ordinance previously adopted on December 9, 1976 and as
amended.
The Site Plan Review Ordinance adopted on April 26, 1983, as subsequently amended, was repealed and replaced by this ordinance.
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Purpose</td>
<td>4</td>
</tr>
<tr>
<td>2</td>
<td>Authority</td>
<td>4</td>
</tr>
<tr>
<td>3</td>
<td>Applicability</td>
<td>4</td>
</tr>
<tr>
<td>4</td>
<td>Effective Date</td>
<td>5</td>
</tr>
<tr>
<td>5</td>
<td>Availability</td>
<td>5</td>
</tr>
<tr>
<td>6</td>
<td>Severability</td>
<td>5</td>
</tr>
<tr>
<td>7</td>
<td>Conflicts with other Ordinances</td>
<td>6</td>
</tr>
<tr>
<td>8</td>
<td>Amendments</td>
<td>6</td>
</tr>
<tr>
<td>9</td>
<td>Land Use Requirements</td>
<td>6</td>
</tr>
<tr>
<td>10</td>
<td>Non-Conformance</td>
<td>6</td>
</tr>
<tr>
<td>11</td>
<td>Administration and Enforcement</td>
<td>6</td>
</tr>
<tr>
<td>12</td>
<td>Permits Required</td>
<td>6</td>
</tr>
<tr>
<td>13</td>
<td>Review Procedures and Fees</td>
<td>6</td>
</tr>
<tr>
<td>13.1</td>
<td>Pre-application</td>
<td>7</td>
</tr>
<tr>
<td>13.1.1</td>
<td>Purpose</td>
<td>7</td>
</tr>
<tr>
<td>13.1.2</td>
<td>Information Required</td>
<td>7</td>
</tr>
<tr>
<td>13.2</td>
<td>Application Submission and Review Procedures</td>
<td>7</td>
</tr>
<tr>
<td>13.3</td>
<td>Final Approval and Filing</td>
<td>9</td>
</tr>
<tr>
<td>13.4</td>
<td>Fees</td>
<td>9</td>
</tr>
<tr>
<td>13.4.1</td>
<td>Application Fee</td>
<td>9</td>
</tr>
<tr>
<td>13.4.2</td>
<td>Technical Review Fee</td>
<td>9</td>
</tr>
<tr>
<td>14</td>
<td>Submission Requirements</td>
<td>10</td>
</tr>
<tr>
<td>14.1</td>
<td>General Information</td>
<td>10</td>
</tr>
<tr>
<td>14.2</td>
<td>Existing Conditions</td>
<td>11</td>
</tr>
<tr>
<td>14.3</td>
<td>Proposed Development Activity</td>
<td>12</td>
</tr>
<tr>
<td>14.4</td>
<td>Approval Block</td>
<td>12</td>
</tr>
<tr>
<td>15</td>
<td>Approval Standards and Criteria</td>
<td>12</td>
</tr>
<tr>
<td>15.1</td>
<td>Dimensional Requirements</td>
<td>13</td>
</tr>
<tr>
<td>15.2</td>
<td>Utilization of the Site</td>
<td>13</td>
</tr>
<tr>
<td>15.3</td>
<td>Adequacy of Road System</td>
<td>13</td>
</tr>
<tr>
<td>15.4</td>
<td>Access into the Site</td>
<td>14</td>
</tr>
<tr>
<td>15.5</td>
<td>Access/Egress Way Location and Spacing</td>
<td>14</td>
</tr>
<tr>
<td>15.6</td>
<td>Internal Vehicular Circulation</td>
<td>15</td>
</tr>
<tr>
<td>15.7</td>
<td>Parking</td>
<td>15</td>
</tr>
<tr>
<td>15.7.1</td>
<td>Parking Spaces Required</td>
<td>15</td>
</tr>
<tr>
<td>15.7.2</td>
<td>Layout and Design</td>
<td>16</td>
</tr>
<tr>
<td>15.8</td>
<td>Pedestrian Circulation</td>
<td>17</td>
</tr>
<tr>
<td>15.9</td>
<td>Stormwater Management</td>
<td>17</td>
</tr>
<tr>
<td>15.10</td>
<td>Erosion Control</td>
<td>18</td>
</tr>
<tr>
<td>15.11</td>
<td>Water Supply and Groundwater Protection</td>
<td>18</td>
</tr>
<tr>
<td>Section</td>
<td>Title</td>
<td>Page</td>
</tr>
<tr>
<td>---------</td>
<td>-------</td>
<td>------</td>
</tr>
<tr>
<td>15.12</td>
<td>Subsurface Waste Disposal</td>
<td>18</td>
</tr>
<tr>
<td>15.12.3</td>
<td>Existing Use, Continuation of Use</td>
<td>19</td>
</tr>
<tr>
<td>15.13</td>
<td>Utilities and Essential Services</td>
<td>19</td>
</tr>
<tr>
<td>15.14</td>
<td>Natural Features and Buffering</td>
<td>19</td>
</tr>
<tr>
<td>15.15</td>
<td>Lighting</td>
<td>20</td>
</tr>
<tr>
<td>15.16</td>
<td>Water Quality Protection</td>
<td>20</td>
</tr>
<tr>
<td>15.17</td>
<td>Hazardous, Special and Radioactive Materials</td>
<td>21</td>
</tr>
<tr>
<td>15.18</td>
<td>Solid, Special and Hazardous Waste Disposal</td>
<td>21</td>
</tr>
<tr>
<td>15.19</td>
<td>Historic and Archaeological Resources</td>
<td>21</td>
</tr>
<tr>
<td>15.20</td>
<td>Floodplain Management</td>
<td>21</td>
</tr>
<tr>
<td>15.21</td>
<td>Technical and Financial Capacity</td>
<td>21</td>
</tr>
<tr>
<td>15.22</td>
<td>Additional Standards for the Mitchell Field Marine Business District</td>
<td>22</td>
</tr>
<tr>
<td>15.22.1</td>
<td>Exterior Lighting</td>
<td>22</td>
</tr>
<tr>
<td>15.22.2</td>
<td>Noise</td>
<td>23</td>
</tr>
<tr>
<td>15.22.3</td>
<td>Odor Control</td>
<td>24</td>
</tr>
<tr>
<td>15.22.4</td>
<td>Visual Impacts</td>
<td>24</td>
</tr>
</tbody>
</table>

Section 16. Post Approval Activities | 25 |
| 16.1 | Limitation of Approval | 25 |
| 16.2 | Approved Plan Necessary to Obtain Building Permit | 25 |
| 16.3 | Performance Guarantees | 26 |
| 16.3.1 | Form of Guarantee | 26 |
| 16.3.2 | Amount of Guarantee | 26 |
| 16.3.3 | Release of Guarantee | 26 |
| 16.3.4 | Default | 26 |

16.4 Minor Amendments to Approved Plans or Activities Requiring Site Plan Approval | 26 |
16.5 Amendments to Approved Plans | 27 |
16.6 Submission of As-Built Plans | 27 |

Section 17. Appeals | 27 |
SECTION 1. PURPOSE

The site plan review provisions set forth in this Ordinance are intended to protect the public health and safety, promote the general welfare of the community, and conserve the environment by assuring that nonresidential and multifamily development is designed and developed in a manner which assures that adequate provisions are made for traffic and pedestrian safety and access; emergency access; water supply; sewage disposal; management of stormwater, erosion, and sedimentation; protection of the groundwater; protection of the environment, wildlife habitat, fisheries, and unique natural areas; protection of historic and archaeological resources; minimizing the adverse impacts on adjacent properties; and fitting the development harmoniously into the fabric of the community.

SECTION 2. AUTHORITY

This Ordinance is adopted under powers granted to the Town by 30-A MRSA § 3001, as may be amended from time to time, and the Revised Comprehensive Plan of Harpswell. Throughout this Ordinance there are "Citizen's Notes". These notes shall not be considered part of this Ordinance as adopted by the Town, but shall only be considered as aids for citizens to use this Ordinance and as guides to the intent of ordinance provisions and their proper interpretation.

SECTION 3. APPLICABILITY

3.1. This Ordinance applies to the following activities wherever they occur in the Town:

1) The construction or placement of any new structure for a nonresidential use, including accessory structures.
2) The expansion of an existing nonresidential structure including accessory structures that increase the total floor area.
3) The conversion of an existing structure, in whole or in part, from a residential use to a nonresidential use, except for home occupations.
4) The establishment of a new nonresidential use, or an expansion of an existing nonresidential use, except for those set forth in Section 3.2, even if no structures are proposed, including uses such as gravel pits, cemeteries, golf courses, campgrounds, and other nonstructural nonresidential uses.
5) The conversion of an existing nonresidential use, in whole or in part, to another nonresidential use if the Planning Board determines that the new use changes the basic nature of the existing use such that it increases the intensity of the on- or off-site impacts that are the subject of the standards and criteria of site plan review described in Section 15 of this Ordinance.
6) The construction or expansion of paved areas or other impermeable surfaces, including walkways, access drives, and parking lots involving an area of more than one thousand (1000) square feet within any three (3) year period for nonresidential uses.
7) Construction or expansion of structures for animal husbandry.
8) If the Planning Board determines pursuant to 30-A M.R.S.A. § 4401(4)(G), as may be amended from time to time, that it shall review multi-unit dwellings and their accessory
structures under this Ordinance, then the Ordinance applies to the following activities:

a) The construction of a residential structure containing three (3) or more dwelling units (a multi-unit dwelling).

b) The modification or expansion of an existing residential structure that increases the number of dwelling units in the structure by three (3) or more in any five (5) year period.

c) The conversion of an existing nonresidential structure, in whole or in part, into three (3) or more dwelling units within a five (5) year period.

9) Mobile Food Handlers that provide a seating area for customers

3.2. The following activities shall not require site plan review approval. Certain of these activities will, however, require the owner to obtain a building permit, plumbing permit or other state or local approvals:

1) The construction, alteration, or enlargement of a single family or two-family dwelling, including accessory structures.

2) The placement, alteration, or enlargement of a single manufactured dwelling or mobile home dwelling, including accessory structures on individually owned lots.

3) Agricultural activities.

4) Timber harvesting and forest management activities.

5) The establishment and modification of home occupations.

6) Yard sales that do not exceed 3 consecutive days and of which there are no more than 2 on one premise in a single calendar year.

7) Mobile Food Handlers that either (a) are exempt from obtaining a license under the Town’s Mobile Food Handlers Ordinance, or (b) hold a valid license issued by the Board of Selectmen under the Town’s Mobile Food Handlers Ordinance and do not provide a seating area for customers.

SECTION 4. EFFECTIVE DATE
The effective date of this Ordinance is March 11, 2000. This Ordinance repeals and replaces the Site Plan Review Ordinance that became effective on April 26, 1983, as amended.

SECTION 5. AVAILABILITY
A certified copy of this Ordinance shall be filed with the Town Clerk and shall be accessible to any member of the public. Copies shall be made available to the public at reasonable cost at the expense of the person making the request. Notice of availability of this Ordinance shall be posted.

SECTION 6. SEVERABILITY
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.
SECTION 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, the more restrictive provision shall control unless Federal or State law provides otherwise.

SECTION 8. AMENDMENTS
This Ordinance may be amended by majority vote of the Town. The effective date of an amendment shall be its date of enactment unless otherwise specified.

Amendments may be initiated by a majority vote of the Planning Board, by a majority vote of the Selectmen or by written petition signed by a number of registered voters equal to 10% of Harpswell voters voting in the last gubernatorial election.

SECTION 9. LAND USE REQUIREMENTS
Except as this Ordinance specifies, no nonresidential structure or land shall be used or occupied, no nonresidential structures or part thereof shall be erected, constructed, expanded, moved, altered or replaced, and no nonresidential site improvement activities such as filling and earth moving, construction of parking areas, access and egress, or loading areas shall be undertaken except in conformity with the requirements of the Ordinance, unless, with respect to dimensional requirements, a variance is granted by the Board of Appeals or the use or activity is exempted from this Ordinance in Section 3, Applicability.

SECTION 10. NON-CONFORMANCE
Non-conforming structures, lots or uses subject to this Ordinance are subject to the non-conformance provisions of the Basic Land Use Ordinance or the Shoreland Zoning Ordinance, as applicable.

SECTION 11. ADMINISTRATION AND ENFORCEMENT
This Ordinance shall be administered and enforced in accordance with the administrative provisions of the Basic Land Use Ordinance, as may be amended from time to time and the Definitions Addendum, as may be amended from time to time.

SECTION 12. PERMITS REQUIRED
After the effective date of this Ordinance, no permit shall be issued by the Code Enforcement Officer for development within the scope of this Ordinance, and no person shall engage in any activity or use of land or structure within the scope of this Ordinance, unless and until a site plan of the development has been reviewed and approved by the Planning Board in accordance with the provisions of this Ordinance.

SECTION 13. REVIEW PROCEDURES AND FEES
The Code Enforcement Office and Planning Board shall use the following procedures in reviewing applications for site plan review approval.
13.1. Pre-application
Prior to submitting a formal application, the applicant or his/her representative shall request a pre-application conference with the Planning Board or its designee. The pre-application conference shall be informal and informational in nature. There shall be no fee for a pre-application review, and such review shall not cause the plan to be a pending application or proceeding under 1 M.R.S.A. § 302, as may be amended from time to time. No decision on the substance of the plan shall be made at the pre-application conference.

13.1.1. Purpose
The purposes of the pre-application conference are to:

1) Allow the Code Enforcement Officer and/or Planning Board or its designee to understand the nature of the proposed use and the issues involved in the proposal;
2) Allow the applicant to understand the development review process and required submissions;
3) Identify issues that need to be addressed in future submissions; and
4) Make the applicant aware of any opportunities for coordinating the development with community policies, programs, or facilities.

In addition, the Planning Board may schedule a site inspection in accordance with subsection 13.2(5) if deemed necessary and resolve any requests for waivers and variations from the submission requirements.

13.1.2. Information Required
There are no formal submission requirements for a pre-application conference. However, the applicant should be prepared to discuss the following:

1) The proposed site, including its location, size, and general characteristics;
2) The nature of the proposed use and potential development;
3) Any issues or questions about existing municipal regulations and their applicability to the development; and
4) Any requests for waivers from the submission requirements.

13.2. Application Submission and Review Procedures

13.2.1. The applicant must prepare and submit a site plan review application, including the development plan and supporting documentation that meets the submission requirements set forth below. This material must be submitted to the Planning Office. The Planning Office shall give a dated receipt to the applicant.

Citizen’s Note: The following procedures described in paragraphs 13.2.2 through 13.2.6 may be compressed into one Planning Board meeting.

13.2.2. The Municipal Office shall, at the applicant's expense, give written notice to the applicant, by first class mail, of the date, time, and place of the meeting at which the application will be considered, and to all property owners within five-hundred (500) feet of the parcel on which the proposed development is located. The Municipal Office must also give written notice to the applicable Fire Chief and the Road Commissioner. Failure of any
property owner, the Fire Chief, or the Road Commissioner to receive the notice sent as required under this subsection shall not necessitate another public meeting or invalidate any action taken by the Planning Board. The Planning Board shall also cause notice of the date, time and place of the meeting at which the application will first be considered to be published in a newspaper of general circulation in the Town at least seven (7) days prior to the meeting.

13.2.3. Within fifty (50) days of the receipt of a site plan review application, the Planning Board shall review the material and determine whether or not the submission is complete. If the application is determined to be incomplete, the Board shall notify the applicant in writing of this finding, shall specify the additional materials required to make the application complete, and shall advise the applicant that the application will not be considered by the Board until the additional information is submitted to the Board. This step shall be repeated until the application is found to be complete.

13.2.4. As soon as the Board determines that the application is complete, the Board may, at its discretion, take final action on the application at the same meeting at which it finds that the application is complete.

13.2.5. The Planning Board may hold an on-site inspection of the site to review the existing conditions, field verify the information submitted and investigate the development proposal. The Board may schedule this visit either before or after the first meeting at which the application is considered. The Board may decide not to hold an on-site inspection when the site is snow covered. If an application is pending during a period when there is snow cover, the deadline by which the Planning Board shall take final action on the application as specified in 13.2.6 may be extended, such extensions shall not exceed thirty-five (35) days after the Board is able to conduct an on-site inspection.

13.2.6. The Planning Board shall take final action on said application within thirty-five (35) days of determining that the application is complete. The Board shall act to deny, to approve, or to approve the application with conditions. The Board may impose such conditions as are deemed advisable to assure compliance with the standards of approval.

In issuing its decision, the Planning Board shall make written findings of fact establishing that the proposed development does or does not meet the standards of approval and other requirements of the Town. The Board shall notify the applicant, and all parties who requested to be notified, of the action of the Board, including the findings of fact and any conditions of approval. This requirement can be met through the distribution of minutes of the meeting containing the findings of fact and decision of the Board.

13.2.7. If any use or occupancy, in whole or in part, of a proposed structure, development or land use is contemplated before all conditions of approval are met, the conditions of approval must so specify.

13.2.8. All time limits provided for in this section may be extended by mutual agreement of the applicant and Planning Board.
13.3. Final Approval and Filing

13.3.1. Upon completion of the requirements of this Section and an approval vote by the majority of the Planning Board, the application shall be deemed to have final approval. The approved site plan shall be signed by the Chair of the Board or his designee and filed by the Board with the Code Enforcement Office.

13.3.2. The Planning Board must prepare a Notice of Decision signed by the Chair of the Board. Upon final approval, the Notice of Decision shall note that the approved site plan is on file at the Codes Enforcement Office. One copy of the Notice of Decision must be recorded by the applicant in the Cumberland County Registry of Deeds within forty-five (45) days of approval and the book and page number provided by the applicant to the Code Enforcement Office. Prior to the expiration of the 45 days, the Planning Board may extend this period for cause.

Failure by the applicant to record the Notice of Decision, at the Registry of Deeds and provide the Code Enforcement Office with the Registry book and page number within forty-five (45) days, or as extended, shall void the site plan approval. No building permits may be issued until compliance with this recording provision is demonstrated.

13.4. Fees

13.4.1. Application Fee. An application for site plan review must be accompanied by an application fee. This fee is intended to cover the cost of the Town’s administrative processing of the application, including notification, advertising, mailings, and similar costs. The fee shall not be refundable. This application fee must be paid to the Town and evidence of payment of the fee must be included with the application.

13.4.2. Technical Review Fee

In addition to the application fee, the applicant for site plan review may also be required by the Planning Board to pay a technical review fee to defray the Town’s legal and technical costs of the application review. This fee must be paid to the Town and shall be deposited in an individual trust account, which is separate and distinct from all other Planning Board and Town accounts. When a technical review fee is required, the application will be considered incomplete until evidence of payment of this fee is submitted to the Planning Board. If the initial fee proves to be insufficient to meet the Town’s legal and technical costs of reviewing the application, the Planning Board may assess an additional fee(s) to cover such legal and technical costs.

The technical review fee may be used by the Planning Board only to pay reasonable costs incurred by the Board, at its discretion, which relate directly to the review of the application pursuant to the review criteria. Such services may include, but need not be limited to, consulting, engineering or other professional fees, attorney fees, recording fees, and appraisal fees. The Town shall provide the applicant, upon written request, with an accounting of his or her account and shall refund all of the remaining monies, including accrued interest, in the account after the payment by the Town of all costs and services related to the review. Such payment of remaining monies shall be made no later than sixty (60) days after the approval of the application, denial of the application, or approval with conditions of the application.
Such refund shall be accompanied by a final accounting of expenditures from the fund. The monies in such fund shall not be used by the Board for any enforcement purposes.

SECTION 14. SUBMISSION REQUIREMENTS

Applications for site plan review must be submitted on application forms provided by the Code Enforcement Office. The complete application form, payment of the required fees, and the required plans and related information must be submitted to the Code Enforcement Office. The submission must contain at least the following exhibits and information unless specifically waived in writing. The Planning Board may waive any of the submission requirements, if the Board makes a written finding that the information is not required to determine compliance with the standards.

All applications for site plan review must contain the following information:

1) A fully executed and signed copy of the application for site plan review.

2) Ten (10) copies of written materials plus ten (10) sets of maps or drawings containing the information required in this section. The written materials must be contained in a bound report. The maps or drawings must be at a scale sufficient to allow review of the items listed under the approval standards and criteria, but in no case shall be more than one hundred (100) feet to the inch for that portion of the tract of land being proposed for development:

14.1. General Information

1) Record owner's name, address, and phone number and applicant's name, address and phone number if different. If the person signing the application is not the owner of the property, then that person must submit a letter of authority from the owner.

2) The area in square feet of the lot which is to be developed. The lot area includes the area of land enclosed within the boundary lines of a lot, minus land below the maximum high water line of a water body or upland edge of a wetland and areas beneath roads serving more than two lots.

3) Names and addresses of all property owners within five hundred (500) feet of any and all property boundaries.

4) Sketch map showing general location of the site within the town based upon a reduction of the tax maps.

5) Boundaries of all contiguous property under the total or partial control of the owner or applicant regardless of whether all or part is being developed at this time.

6) The tax map and lot number of the parcel or parcels on which the development is located.

7) A copy of the deed to the property, an option to purchase the property or other documentation to demonstrate right, title or interest in the property on the part of the applicant.

8) A copy of all existing covenants, deed restrictions, easements, right-of-ways, or other encumbrances affecting the property, delineated on the site plan wherever possible.

9) The name, registration number, and seal of the person who prepared the plan, if applicable.
10) Evidence of the applicant's technical and financial capability to carry out the development as proposed.

14.2. Existing Conditions

1) Zoning classification(s), including overlay and/or sub-districts, of the property and the location of zoning district boundaries if the property is located in two (2) or more zoning districts or sub-districts or abuts a different district.

2) A boundary survey including the bearings and length of all property lines and required setbacks and buffers of the property to be developed and the source of this information. The Planning Board may waive the requirement of a boundary survey when the Planning Board deems that sufficient information is available to establish, on the ground, all property boundaries.

3) Location and size of any existing sewer and water mains, culverts and drains, on-site sewage disposal systems, wells, underground tanks or installations, and power and telephone lines and poles on the property to be developed, or on abutting roads, and land that may serve the development, and an assessment of their adequacy and condition to meet the needs of the proposed use.

4) Location, names, and present widths of existing public and/or private roads and rights-of-way within or adjacent to the proposed development.

5) The location and dimensions of all existing structures on the site.

6) The location and dimensions of existing driveways, parking and loading areas, walkways, and sidewalks on or immediately adjacent to the site.

7) Location of intersecting roads or driveways within two hundred (200) feet of the site.

8) The location of open drainage courses, wetlands, stonewalls, graveyards, fences, stands of trees, and other important or unique natural areas and site features, including but not limited to, floodplains, deer wintering areas, significant wildlife habitats, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, sand and gravel aquifers, and historic and/or archaeological resources, together with a description of such features. For any proposed land use activity involving structural development or soil disturbance on sites listed on the National Register of Historic Places, the applicant shall provide evidence that they have submitted their proposal to the Maine Historic Preservation Commission for review and comment. The Planning Board may require a written statement from the Maine Historic Preservation Commission indicating the proposed development will not adversely impact archeological or historic resources or recommending how the proposed development might be modified to minimize any adverse impact on archeological or historic resources.

Citizen’s Note: Consult with the Code Enforcement Office for availability of this information.

9) The direction of existing surface water drainage across the site and, if specifically required by the Planning Board, a topographic survey.

10) The location, front view, dimensions, and lighting of existing signs.

11) The location of the nearest fire hydrant, dry hydrant or other water supply for fire protection.
14.3. Proposed Development Activity

1) Estimated demand for water supply and sewage disposal together with the location and dimensions of all provisions for water supply and wastewater disposal, and evidence of their adequacy for the proposed use, including a site evaluation and plan indicating soil suitability for sewage disposal if on-site sewage disposal is proposed.

2) A surface drainage plan that shows the location and size of ditches, culverts, drainage ways, easements and other improvements as well as the direction of proposed surface water drainage across the site and from the site, with an assessment of impacts on downstream properties.

3) A description of the solid, special, and hazardous waste to be generated, provisions for handling that waste, and the location and proposed screening of any on-site collection or storage facilities.

4) The location, dimensions, and materials to be used in the construction of proposed driveways, parking and loading areas, and walkways and any changes in traffic flow onto or off-site.

5) Existing and proposed landscaping and buffering.

6) The location, dimensions, height and, if a structure is in a flood plain, ground floor elevation of all proposed structures including expansions or alterations.

7) A calculation of total area covered by all structures, driveways, parking areas, and other impermeable surfaces expressed in square feet and as a percentage of lot area.

8) Location, front view, materials, and dimensions of proposed signs together with the method for securing the sign.

   **Citizen’s Note:** See Harpswell Sign Ordinance.

9) Location and type of exterior lighting.

10) The location of all utilities, including fire protection systems.

11) A general description of the proposed use or activity.

12) An estimate of the amount, type and impact of peak hour and daily traffic to be generated by the development.

13) Stormwater calculations, erosion and sedimentation control measures, and water quality and/or phosphorous export management provisions, if the development requires a stormwater permit from the Maine Department of Environmental Protection or if the Planning Board determines that such information is necessary based upon the scale of the development or the existing conditions in the vicinity of the development.

14.4. Approval Block

Space must be provided on the plan drawing for the signatures of the Planning Board Chair and date together with the following words, “Approved: Town of Harpswell Planning Board”.

SECTION 15. APPROVAL STANDARDS AND CRITERIA

The following criteria shall be used by the Planning Board in reviewing applications for Site Plan Review and shall serve as minimum requirements for approval of the application. The application shall not be approved unless the Planning Board determines that the applicant has
met all of these standards. In all instances, the burden of proof shall be on the applicant who must produce evidence sufficient to warrant a finding that all applicable criteria have been met.

*Citizen’s Note:* Consult with the Code Enforcement Officer on whether and how other town land use ordinances may apply.

15.1. Dimensional Requirements

The plan for development must meet the dimensional requirements of the Basic Land Use Ordinance or Shoreland Zoning Ordinance, as applicable, pertaining to lot area, setbacks, impermeable surface coverage, structural height and frontage. For nonresidential development in areas other than the Shoreland Zone, the minimum lot size standard and the minimum road frontage standard is identical to the requirements for a single dwelling unit.

15.2. Utilization of the Site

The plan for the development must reflect the natural capabilities of the site to support development. Structures, lots, and support facilities must be clustered in those portions of the site that have the most suitable conditions for development. Environmentally sensitive areas, including but not limited to, wetlands, steep slopes, floodplains, significant wildlife habitats, fisheries, scenic areas, habitat for threatened and endangered plants and animals, unique natural communities and natural areas, and sand and gravel aquifers must be maintained and preserved to the maximum extent. Natural drainage areas must also be preserved to the maximum extent. The development must include measures for protecting these resources, including but not limited to, modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.

15.3. Adequacy of Road System

15.3.1. Vehicular access to the site must be on roads which have adequate capacity to accommodate the additional traffic generated by the development.

15.3.1.1. For developments which generate one hundred (100) or more peak hour trips based on the latest edition of the Trip Generation Manual of the Institute of Traffic Engineers, intersections on major access routes to the site within one (1) mile of any entrance road which are functioning at a Level of Service of D or better at the time the application is reviewed by the Planning Board must function at a minimum at Level of Service D after development. If any such intersection is functioning at a Level of Service E or lower at the time the application is reviewed by the Planning Board, the development must not reduce the current level of service. This requirement may be waived by the Planning Board if the development is located within a growth area identified in the Town’s land use ordinances and the Board determines that the development will not have an unnecessary adverse impact on traffic flow or safety.

15.3.2. A development not meeting this requirement may be approved if the applicant demonstrates that:

1) A public agency has committed funds to construct the improvements necessary to bring the level of access to this standard, or
2) The applicant will assume financial responsibility for the improvements necessary to bring the level of service to this standard and will assure the completion of the improvements with a financial guarantee acceptable to the Town.

15.4. Access into the Site

Vehicular access to and from the development must be safe and convenient.

1) Any driveway or proposed road and adjacent landscaping must be designed so as to provide the minimum sight distance according to the Maine Department of Transportation standards, to the maximum extent possible.

2) Points of access and egress must be located to avoid hazardous conflicts with existing turning movements and traffic flows.

3) The grade of any proposed access/egress way must be not more than ±3% for a minimum of forty (40) feet, from the intersection.

4) The intersection of any proposed access/egress way must function: (a) at a Level of Service of D following development if the development will generate one thousand (1,000) or more vehicle trips per twenty-four (24) hour period; or (b) at a level which will allow safe access into and out of the development if less than one thousand (1,000) trips are generated.

5) Where a lot has frontage on two (2) or more roads, the primary access to and egress from the lot must be provided from the road where there is less potential for traffic congestion and for traffic and pedestrian hazards. Access from other roads may be allowed if it is safe and does not promote shortcutting through the site.

6) Where it is necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, the applicant shall be responsible for providing turning lanes, traffic directional islands, and traffic controls within public roads.

7) Access ways must be designed and have sufficient capacity to avoid queuing of entering vehicles on any public road.

8) The following criteria must be used to limit the number access/egress ways serving a proposed development:
   a. No use that generates less than one hundred (100) vehicle trips per day shall have more than one (1) two-way access/egress way onto a single road. Such access/egress way must be no greater than thirty (30) feet wide. The Planning Board may approve a wider width if it deems a wider width to be functionally necessary to the development.
   b. No use which generates one hundred (100) or more vehicle trips per day shall have more than two (2) access/egress ways from and to a single road. The combined width of both access/egress ways must not exceed sixty (60) feet.

15.5. Access/Egress Way Location and Spacing

Access/egress ways must meet the following standards:

1) Entrances/exits must be located at least fifty (50) feet from the closest unsignalized intersection and one hundred fifty (150) feet from the closest signalized intersection, as measured from the point of tangency for the corner to the point of tangency for the access
way. This requirement may be reduced by the Planning Board if the shape of the site does not allow conformance with this standard.

2) Private access ways in or out of a development must be separated by a minimum of seventy-five (75) feet where possible.

15.6. Internal Vehicular Circulation

The layout of the site must provide for the safe movement of passenger, service, and emergency vehicles through the site.

1) Nonresidential developments that will be served by delivery vehicles must provide, as necessary, off-road loading facilities located entirely off roads and entirely on the same lot as the structure or use to be served, and provide a clear route for such vehicles with geometric design to allow turning and backing.

2) Clear routes of access and egress must be provided and maintained for emergency vehicles. The Planning Board may require that such a route be kept clear and posted with appropriate signs.

3) The layout and design of parking areas must provide for safe and convenient circulation of vehicles throughout the lot.

4) All roads must be designed to harmonize with the topographic and natural features of the site insofar as practical by minimizing filling, grading, excavation, or other similar activities which result in unstable soil conditions and soil erosion, by fitting the development to the natural contour of the land and avoiding substantial areas of excessive grade and tree removal, and by retaining existing vegetation during construction. The road network must provide for vehicular, pedestrian, and cyclist safety, all season emergency access, snow storage, and delivery and collection services.

15.7. Parking

15.7.1. Parking Spaces Required

The site must provide for sufficient off-road parking. Parking requirements shall be calculated utilizing one or more of the following formulas in a cumulative fashion, as appropriate:

<table>
<thead>
<tr>
<th>Use</th>
<th>Parking Spaces Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lodging and Accommodations</td>
<td>1 per lodging unit and 1 per employee</td>
</tr>
<tr>
<td>Campground</td>
<td>1 per site, 1 per employee</td>
</tr>
<tr>
<td>Multi-Family Residential</td>
<td>2 per dwelling unit</td>
</tr>
<tr>
<td>Church</td>
<td>1 per 3 seats in the assembly room</td>
</tr>
<tr>
<td>School</td>
<td>1 per 3 seats in principal assembly room or 2 per classroom whichever is greater</td>
</tr>
<tr>
<td>Private Club or Lodge</td>
<td>1 per 4 members</td>
</tr>
<tr>
<td>Hospital and Nursing Homes</td>
<td>1 per 3 beds and 1 per employee based upon expected average occupancy</td>
</tr>
<tr>
<td>Retail and Commercial Sales</td>
<td>1 per 180 sf. of gross leasable floor area</td>
</tr>
</tbody>
</table>
### 15.7.2. Layout and Design

Off-road parking must conform to the following standards:

1) Parking areas with more than two (2) parking spaces must be arranged so that it is not necessary for vehicles to back into the road.

2) All parking spaces, access drives, and impervious surfaces must be located at least twenty (20) feet from any side or rear lot line, except where standards for buffer yards require a greater distance. No parking spaces or asphalt type surface shall be located within ten (10) feet of the front property line. Parking lots on adjoining lots may be connected by access/egress ways not exceeding twenty-four (24) feet in width.

3) Parking stalls and aisle layout must conform to the following standards.

<table>
<thead>
<tr>
<th>Parking Angle</th>
<th>Stall Width</th>
<th>Skew Width</th>
<th>Stall Depth</th>
<th>Aisle Width*</th>
</tr>
</thead>
<tbody>
<tr>
<td>90°</td>
<td>8’-6”</td>
<td>8’-6”</td>
<td>18’-6”</td>
<td>12’-0” one way only</td>
</tr>
<tr>
<td>60°</td>
<td>8’-6”</td>
<td>10’-6”</td>
<td>18’-0”</td>
<td>16’-0” one way only</td>
</tr>
<tr>
<td>45°</td>
<td>8’-6”</td>
<td>12’-9”</td>
<td>17’-6”</td>
<td>12’-0” one way only</td>
</tr>
<tr>
<td>30°</td>
<td>8’-6”</td>
<td>17’-0”</td>
<td>17’-0”</td>
<td>12’-0” one way only</td>
</tr>
</tbody>
</table>
* Aisle width doubled for two way traffic.

4) In lots utilizing diagonal parking, the direction of proper traffic flow must be indicated by signs, pavement markings or other permanent indications and maintained as necessary.

5) Parking areas for non-residential uses must be designed to permit each motor vehicle to proceed to and from the parking space provided for it without requiring the moving of any other motor vehicles. Double stack parking may be permitted for resident parking in conjunction with residential uses if both spaces in the stack are assigned to the occupants of the same dwelling unit.

6) Provisions must be made to restrict the "overhang" of parked vehicles when it might restrict traffic flow on adjacent through roads, restrict pedestrian or bicycle movement on adjacent walkways, or damage landscape materials.

15.8. Pedestrian Circulation

The site plan must provide for a system of pedestrian ways within the development appropriate to the type and scale of development. This system must connect the major structure entrances/exits with parking areas and with sidewalks, if they exist or are planned in the vicinity of the development. The pedestrian network may be located either in the road right-of-way or outside of the right-of-way in open space or recreation areas. The system must be designed to link the development with residential, recreational, and commercial facilities, schools, bus stops, and sidewalks in the neighborhood or, when appropriate, to connect with amenities such as parks or open space on or adjacent to the site.

15.9. Stormwater Management

Adequate provisions must be made for the collection and disposal of all stormwater that runs off proposed roads, parking areas, roofs, and other surfaces, through a stormwater drainage system and maintenance plan, which must not have adverse impacts on abutting or downstream properties.

1) To the extent possible, the plan must retain stormwater on the site using the natural features of the site.

2) Stormwater runoff systems must detain or retain water to minimize the rate of flow from the site after development.

3) The applicant must demonstrate that on and off-site downstream channel or system capacity is sufficient to carry the flow without adverse effects, including but not limited to flooding and erosion of shoreland areas, or that he/she will be responsible for whatever improvements are needed to provide the required increase in capacity and/or mitigation.

4) All natural drainage ways must be preserved at their natural gradients and must not be filled or converted to a closed system unless approved as part of the Site Plan Review.

5) The design of the stormwater drainage system must provide for the disposal of stormwater without damage to roads, adjacent properties, downstream properties, shoreland areas, inter-tidal areas, wetlands, soils, and vegetation.

6) The design of the storm drainage systems must be fully cognizant of upstream runoff that must pass over or through the site to be developed and provide for this movement.
7) The biological and chemical properties of the receiving waters and adjacent shoreland or inter-tidal areas must not be degraded by the stormwater runoff from the development site. The use of oil and grease traps in manholes, the use of on-site vegetated waterways, and vegetated buffer strips along waterways and drainage swales, and the reduction in use of deicing salts and fertilizers may be required as part of the site plan approval, especially where the development stormwater discharges into a gravel aquifer area or other water supply source, or a great pond, wetland, inter-tidal area, or the ocean.

15.10. Erosion Control

All structures, site, and road designs and layouts must harmonize with existing topography and conserve desirable natural surroundings to the fullest extent possible such that filling, excavation and earth moving activity must be kept to a minimum. Natural vegetation must be preserved and protected wherever possible. Earthmoving, erosion, and sedimentation control must conform to the provisions of Section 15.16 of the Shoreland Zoning Ordinance.

**Citizen’s Note:** Soil erosion and sedimentation of watercourses and water bodies may be minimized by an active program meeting the requirements of the “Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices”, dated March 1991. A copy is on file in the Code Enforcement Office. Additional copies may be obtained from the Maine Department of Environmental Protection or the Cumberland County Soil and Water Conservation District.

15.11. Water Supply and Groundwater Protection

The development must be provided with a system of water supply that provides each use with an adequate supply of water.

If the development is to be served by a public water supply, the applicant must secure and submit a written statement from the supplier that the proposed water supply system conforms with its design and construction standards, will not result in an undue burden on the source or distribution system, and will be installed in a manner adequate to provide needed domestic and fire protection flows.

In the Mitchell Field Marine Business District all uses must be provided with an adequate fire protection water supply. If the community system located on the Mitchell Field property does not provide adequate fire protection flows and pressure, the applicant must demonstrate how adequate fire protection will be provided.

The proposed site development and use must not adversely impact either the quality or quantity of groundwater available to abutting properties or to public water supply systems. Applicants whose developments involve on-site water supply or sewage disposal systems with a capacity of five hundred (500) gallons per day or greater must demonstrate that the groundwater at the property line will comply, following development, with the standards for safe drinking water as established by the State of Maine.

15.12. Subsurface Waste Disposal

**15.12.1.** All subsurface sewage disposal systems must be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules and to minimize adverse impacts on ground water quality.
15.12.2. All new, replacement, renovated, or expanded structures or uses generating waste, must provide evidence of the type specified in 13.3.4 of the Basic Land Use Ordinance that an adequate waste water disposal system can be constructed or that an adequate waste water disposal system already exists.

15.12.3. **Existing Use, Continuation of Use:** The use of any legal system which exists on the effective date of this Ordinance, or which had previously been approved for installation, may be continued without change except as may be specifically covered by the Maine State Plumbing Code or deemed necessary by the plumbing inspector for the general safety and welfare of the occupants and the public.

15.12.4. The minimum setback for new subsurface sewage disposal systems shall be not less than one hundred (100) horizontal feet from the maximum high water line of a perennial water body. The minimum setback distances from the water bodies for new subsurface sewage disposal systems shall not be reduced by variance.

15.12.5. Replacement systems shall meet the standards for replacement systems as contained in the Maine Subsurface Wastewater Disposal Rules.

15.12.6. When two or more lots or structures in different ownership share the use of a common subsurface disposal system, the system must be owned and maintained in common by an owner’s association. Covenants in the deeds for each lot, or in the case of the Mitchell Field Marine Business District, provisions in the leases for each lot, must require mandatory membership in the association and provide for adequate funding for the association to assure proper maintenance of the system.

**Citizen’s Note:** The Town recommends that all owners of new and replacement systems install low-flow flushes and shower heads.

15.13. **Utilities and Essential Services**

Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors and above ground facilities must be located so as to avoid crossing open areas and scenic views as identified in the Comprehensive Plan.

15.14. **Natural Features and Buffering**

15.14.1 The landscape must be preserved in its natural state insofar as practical by minimizing tree removal, disturbance and compaction of soil, and by retaining existing vegetation insofar as practical during construction. Extensive grading and filling must be avoided as much as possible.

15.14.2. The development must provide for the buffering of adjacent uses where there is a transition from one type of use to another use and for the screening of mechanical equipment and service and storage areas. Buffering must be designed to provide a year-round visual screen in order to minimize adverse impacts. The buffer may be provided by distance, landscaping, fencing, changes in grade, and/or a combination of these and other techniques.

1) Buffers shall be sufficient to shield structures and uses from the view of incompatible abutting properties and traveled ways, and to otherwise prevent any nuisances.
2) Exposed storage areas, service areas, exposed machinery installations, and gravel extraction operations, truck loading areas, utility structures other than transmission poles, and areas used for the storage and collection of discarded automobiles, auto parts, metals or any other articles of salvage or refuse, and similar accessory areas and structures, shall have sufficient setbacks and screening to provide an audio/visual buffer sufficient to minimize their adverse impact on other land uses within the development site and surrounding properties, such as a stockade fence or a dense evergreen hedge six feet or more in height.

3) Where a potential safety hazard to children would be likely to arise, physical screening sufficient to deter small children from entering the premises shall be provided and shall be maintained in good condition.

4) Natural features shall be maintained wherever possible to provide a buffer between the proposed development and incompatible abutting properties and roads. When natural features such as topography, gullies, stands of trees, shrubbery, and rock outcrops do not exist or are insufficient to provide a buffer, other kinds of buffers shall be considered.

5) Evergreens can be used as buffers, provided they are planted properly. An evergreen buffer requires two or three rows of staggered plantings. The rows should be five feet apart and the evergreens planted four feet on center.

6) Fencing and screening shall be durable and properly maintained at all times by the owner.

7) All buffer areas shall be maintained in a neat and sanitary condition by the owner.

8) In the Mitchell Field Marine Business District, any lot that abuts the perimeter of the Mitchell Field Marine Business District must maintain a buffer along that property line. The buffer must meet the requirements of this section and must include the entire required setback area except for provisions to provide for public access across the lots. Any lot that abuts a portion of the Mitchell Field property outside of the Mitchell Field Marine Business District that is designated for recreational use must maintain a buffer along that property line. The design of the buffer in this area should provide for a treatment that addresses buildings and service areas while maintaining views across the lot to the ocean to the extent feasible (see provisions of Section 15.22. relative to visual impacts). For the purposes of this requirement, service areas do not include areas used for outside boat storage in conjunction with a functionally water-dependent use, marina, boat repair facility, or other marine-related business.

### 15.15. Lighting

Provisions for exterior lighting must not create undue hazards to motorists traveling on adjacent roads, must be adequate for the safety of the occupants or users of the site, and must not damage the value or diminish the usability of adjacent properties.

### 15.16. Water Quality Protection

All aspects of the development must be designed so that:

1) No person or activity shall result in, locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity, or temperature that may run off, seep, percolate, or wash into surface or ground waters so as to contaminate, pollute, or harm such waters.
or cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste, or unsightliness or be harmful to human, animal, plant, or aquatic life.

2) All storage facilities for fuel, chemicals, chemical or industrial wastes, and biodegradable raw materials, must meet the standards of the Maine Department of Environmental Protection and the State Fire Marshal's Office.

3) If the development is located within the watershed of a “body of water most at risk from development” as identified by the Maine Department of Environmental Protection (DEP), the development must comply with the standards of the DEP with respect to the export of total suspended solids and/or phosphorous.

15.17. Hazardous, Special and Radioactive Materials

The handling, storage, and use of all materials identified by the standards of a federal or state agency as hazardous, special or radioactive must be done in accordance with the standards of these agencies.

No flammable or explosive liquids, solids or gases shall be stored in bulk above ground unless they are located at least seventy-five (75) feet from any lot line, or forty (40) feet in the case of underground storage. All materials must be stored in a manner and location which is in compliance with applicable rules and regulations of the Maine Department of Public Safety and other federal, state, and local regulations.

15.18. Solid, Special and Hazardous Waste Disposal

The proposed development must provide for adequate disposal of the solid, special and hazardous wastes generated by the development. All waste must be disposed of at a licensed disposal facility having adequate capacity to accept the development's wastes.

15.19. Historic and Archaeological Resources

The development shall be designed to protect and preserve archeological and historic sites that have been identified in the Town’s Comprehensive Plan, or by the Maine Historic Preservation Commission or the National Park Service.

15.20. Floodplain Management

If any portion of the site is located within a special flood hazard area as identified by the Federal Emergency Management Agency, all use and development of that portion of the site must be consistent with the Town's Floodplain Management Ordinance.

15.21. Technical and Financial Capacity

The applicant must demonstrate that he/she has the financial and technical capacity to carry out the development in accordance with this Ordinance and the approved plan.
15.22. **Additional Standards for the Mitchell Field Marine Business District**

The following performance standards apply only to development within the Mitchell Field Marine Business District. In reviewing applications for development within this District, the Planning Board must determine that each of these standards will be met. Where these standards are more restrictive than other standards of this ordinance, these standards shall control.

15.22.1. **Exterior Lighting**

Exterior lighting, including new lighting or modifications to existing lighting, must provide only the minimum lighting levels necessary to ensure adequate vision, safety and comfort and not cause glare beyond the lot boundaries. Exterior lighting must conform to the following standards:

1) All lighting fixtures whether pole-mounted or building mounted, must be full cut-off fixtures.

2) Lighting fixtures must be hooded or shielded so that the lighting element is not exposed to view from adjacent properties, roads, or the ocean.

3) The use of flood lighting or other directional lighting is not permitted in the Mitchell Field Marine Business District.

4) The mounting height of all lighting fixtures as measured to the light source must not exceed twenty feet above the surrounding grade at the base of the pole for pole-mounted fixtures or at the foundation directly beneath the light for building-mounted fixtures.

5) Lighting fixtures located on or within canopies or other horizontal surfaces must be recessed into the ceiling or surface so that the lamp, reflector, or lens is not visible from roads or adjacent property outside of the Mitchell Field Marine Business District and to limit the direction of light as required for “cut-off fixtures”. Refractors or diffusing panels that are dropped below the surface are not permitted.

6) The illumination of the walls of buildings or other architectural features is not permitted.

7) The maximum illumination level at the property line of the lot with any other lot that is not part of the District measured four feet above grade must be not more than 0.2 foot-candle.

8) Exterior lighting other than security lighting must be turned off when the business is not in operation. The use of after-hours security lighting is permitted provided that the average lighting level does not exceed two (2) foot-candles when the business is not in operation.
15.22.2. Noise

The location and design of structures as well as service and loading areas, and the operation of the site must minimize the impact of noise on areas outside of the Mitchell Field Marine Business District. This requirement can be met by the following:

1) All work and operations will be conducted, and all machinery including, but not limited to, generators, compressors, and HVAC components will be located within a sound insulated structure, or

2) If the applicant demonstrates to the satisfaction of the Planning Board that the requirement of 1) cannot be met without unduly limiting the facility’s intended use and function, the applicant must submit, and the Planning Board must review as part of the Site Plan Review for the use, a Noise Control Plan demonstrating how the noise impacts will be minimized. If the sound generating characteristics of the use change or if a new use occupies the property, the Noise Control Plan must be revised and submitted for review and approval by the Planning Board.

In approving a Noise Control Plan, the Planning Board must find that the applicant has made adequate provisions to minimize noise impacts consistent with reasonable operation of the site. In reviewing and approving a Noise Control Plan, the Planning Board shall apply the following decibel sound limit for day and night activity unless the applicant demonstrates and the Planning Board finds that a higher limit is necessary due to the nature of the use based on typical noise levels associated with that use with the application of appropriate noise control measures:

The maximum allowable sound level in dBA based on a fifteen-minute equivalent sound level $L_{Aeq 15\text{minute}}$ when measured at the boundary of the Mitchell Field Maine Business District:

- for daytime activity between the hours of 6:00 AM and 9:00 PM $65\text{dBA}$
- for nighttime activity between the hours of 9:00 PM and 6:00 AM $50 \text{ dBA}$

In approving a Noise Control Plan, the Planning Board may establish reasonable requirements to ensure that noise impacts are minimized. These requirements may include, but are not limited to:

a) provisions for enclosing machinery, equipment, or operations;
b) limits on the hours of operation;
c) design of the site to reduce noise impacts (noise reducing site design);
d) the methods of operation of noise producing equipment or operations;
e) alterations of vehicle travel patterns on the site including the location of service or loading areas, and/or
f) provisions for sound level monitoring.
15.22.3. Odor Control

The location and design of structures as well as service and loading areas, and the operation of the site must minimize the impact of odors on areas outside of the Mitchell Field Marine Business District. This requirement can be met by the following:

1) All work and operations that generate odors will be conducted within a structure without any venting of odors to the outside, or

2) If the applicant demonstrates to the satisfaction of the Planning Board that the requirement of 1) cannot be met without unduly limiting the facility’s intended use and function, the applicant must submit, and the Planning Board shall review, an Odor Control Plan demonstrating how the odor impacts will be minimized. If the odor generating characteristics of the use change or if a new use occupies the property, the Odor Control Plan must be revised and submitted for review and approval by the Planning Board. In approving an Odor Control Plan, the Planning Board may establish reasonable requirements to ensure that the applicant has made adequate provisions to minimize odor impacts consistent with the reasonable operation of the site. These requirements may include, but are not limited to:

   a) provisions for odor collection and/or reduction equipment on machinery, equipment, exhaust fans, or operations;
   b) design of the site to reduce odor impacts including the location of odor generating activities;
   c) requirements for modes of operation; and/or
   d) provisions for odor monitoring.

15.22.4. Visual Impacts

The development of lots within the Mitchell Field Marine Business District must minimize the visual impact of the development on adjacent residential neighborhoods, other areas of the Mitchell Field property, and people who can see the site from the water. This requirement can be met by the following:

1. The location and design of structures and other improvements on the lot, in conjunction with structures and improvements on other lots in the Mitchell Field Marine Business District, must maintain views of the ocean from other areas within the Mitchell Field property to the extent feasible consistent with reasonable development and use of the property for the intended purpose. Where feasible, view corridors across the Marine Business District to the water must be maintained. Structures should be clustered together or oriented with their long axis perpendicular to the shoreline if feasible from an operational perspective to maximize views through the district.

2. Structures and other improvements must be used to screen parking lots, service and loading areas, and loading docks or overhead doors from view from the main Mitchell Field access road, the “Lower Field” as shown in the Mitchell Field Master Plan, adjacent properties outside of the Mitchell Field Marine Business District, and/or the ocean where practical. For the purposes of this requirement, service areas do not include areas used for
outside boat storage in conjunction with a functionally water-dependent use, marina, boat repair facility, or other marine-related business.

3. Architectural features such as dormers, entranceways, shade structures, windows, breaks in the roofline, or wall offsets should be used to break up the scale of structures especially larger ones with a footprint of more than ten thousand (10,000) square feet or walls that are longer than one hundred (100) feet in length.

4. Exterior surfaces of structures including roofs must be treated so that the development blends into the landscape when viewed from a distance especially from the water. The use of dark natural colors and earth tones is encouraged. Bright primary colors or light tones should be avoided. Matte finishes are preferred while high gloss or reflective finishes should be avoided. Exterior surfaces should not be reflective or metallic appearing unless required by operational necessity.

5. Large westerly-facing windows should be avoided unless they are treated to avoid glare through the use of non-reflective glass, recessing of the windows, the use of shading devices that cast a shadow on the window, or similar techniques.

6. All functional elements such as transformers, HVAC units, dumpsters, material storage areas, loading docks/doors must be either incorporated into the building or screened from view by enclosures, fencing, landscaping, or other techniques.

SECTION 16. POST APPROVAL ACTIVITIES

16.1. Limitation of Approval. Substantial start of construction of the development covered by any site plan approval must be commenced within twelve (12) months of the date upon which the approval was granted. If construction has not been substantially started within the specified period, the approval shall be null and void. The applicant may request an extension of the approval deadline prior to the expiration of the period. Such request must be in writing and must be made to the Planning Board. The Planning Board may grant up to a one-year extension if the approved plan conforms to the ordinances in effect at the time the extension is granted and if any and all federal and state approvals and permits are current.

16.1.2. If construction has not been completed within two (2) years of the granting of approval, the approval shall be null and void, unless the Planning Board grants an extension of the time to complete the development. When an approval has expired, a new site plan review application shall be filed. The new application must meet the requirements of the Town’s land use ordinances in effect at the time the extension is granted and if any and all federal and state approvals and permits are current.

16.2. Approved Plan Necessary to Obtain Building Permit

One copy of the approved site plan must be included with the application for the building permit(s) for the development and all construction activities must conform to the approved plan, including any conditions of approval and minor changes approved by the Code Enforcement Officer to address field conditions.
16.3. Performance Guarantees

Prior to approval of the site plan, the Planning Board must require documentation that the applicant has financial capacity to carry out the proposed development. A performance guarantee, letter of credit or similar agreement with the Planning Board may be required for the following, whether on-site or off-site:

1) The construction of roads and/or buffer improvements;

2) The construction of any water supply or sewage system other than individual on-site facilities;

3) The construction of drainage systems, erosion control measures, or water supply systems for fire protection; and

4) The construction of other improvements, such as buffer strips, intended to minimize adverse impacts on the public or on abutting properties.

16.3.1. Form of Guarantee. The performance guarantee may be tendered as a certified check payable to the Town, a savings account passbook in the name of the Town, an irrevocable letter of credit from a financial institution acceptable to the Selectmen, or a faithful performance bond running to the Town and issued by a surety company licensed to do business in the State of Maine and acceptable to the Selectmen.

16.3.2. Amount of Guarantee

The amount of the performance guarantee is one hundred twenty-five (125) percent of the cost of the requirements of Subsection 16.3 above. All guarantees are conditioned upon the completion of all such improvements within two (2) years from the date of approval or another agreed upon date based on Section 16.1 above of this Ordinance.

16.3.3. Release of Guarantee

Prior to the release of any part of the performance guarantee, the Planning Board shall determine to its satisfaction, in part upon the report of the Code Enforcement Officer or the Town's consultant and whatever other agencies and departments may be involved, that the proposed improvements meet or exceed the design and construction requirements for that portion of the improvements for which the release is requested.

16.3.4. Default

If, upon inspection, the Code Enforcement Officer or the Town's consultant finds that any of the required improvements have not been constructed in accordance with the approved plan and specifications filed as part of the application, he or she shall so report in writing to the Board of Selectmen, the Planning Board, and the applicant. The performance guarantee shall then remain in place until the provisions of Subsection 16.3.3 above are met.

If the requirements of Subsection 16.3.3 are not met within a reasonable period of time after such notice, the Selectmen may utilize the funds from the guarantee to cause the completion of the improvements or to restore the site to its pre-development condition.
16.4. Minor Amendments to Approved Plans or Activities Requiring Site Plan Approval

Minor amendments in approved site plans or activities identified in Section 3 of this Ordinance that were in existence at the time of first adoption of this Ordinance may be approved by a Staff Review Committee consisting of the Code Enforcement Officer, Town Planner, and Chair of the Planning Board or his/her designee, provided that any such amendment does not affect compliance with the Site Plan Review Ordinance approval standards or alter the essential nature of the original site plan or activity. The Town Planner shall serve as the Chair of the Staff Review Committee. Amendments to approved site plans for structures of less than one thousand (1,000) square feet shall be reviewed by the Staff Review Committee rather than the Planning Board, except that the Staff Review Committee may refer any such proposed amendments to the Planning Board if it determines that the proposed amendment affects compliance with the Site Plan Review Ordinance approval standards or alters the essential nature of the original site plan. The Staff Review Committee shall cause notice of the date, time and place of the meeting at which the minor amendment will first be considered to be published in a newspaper of general circulation in the Town at least seven (7) days prior to the meeting and written notice of said meeting to be mailed to all property owners within five hundred (500) feet of the parcel at least seven (7) days prior to the meeting. Approval by the Staff Review Committee shall require the affirmative vote of at least two members of the Committee. The applicant may request a continuation of the Staff Review Committee’s consideration if only two members are present. The Town Planner shall provide written notice to the Planning Board of the fact that a minor amendment to the site plan has been approved. Any amendment approved by the Staff Review Committee pursuant to this subsection must be endorsed in writing on the approved plan by the Staff Review Committee. Failure of any property owner to receive the notice required under this subsection does not invalidate any action taken by the Staff Review Committee.

16.5. Amendments to Approved Plans

Approvals of site plans are dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from the plans, proposals, and supporting documents, except minor amendments as set forth in Section 16.4 of this Ordinance, is subject to prior review and approval by the Planning Board.

16.6. Submission of As-Built Plans

Any development involving the construction of more than ten thousand (10,000) square feet of gross floor area or twenty thousand (20,000) square feet of impermeable surface, must provide the Code Enforcement Office with a set of construction plans showing the structure(s) and site improvements as actually constructed on the site. These "as-built" plans must be submitted before the issuance of a certificate of compliance for the development.

SECTION 17. APPEALS

Appeals of any action taken by the Planning Board under this Ordinance shall be to the Board of Appeals in accordance with the Basic Land Use Ordinance’s administrative provisions. Action taken by the Staff Review Committee under this Ordinance may be appealed, in writing, to the Planning Board by the applicant or an aggrieved party within fifteen (15) days of final action by the Staff Review Committee; provided, however, that any action by the Staff Review Committee to refer a matter to the Planning Board shall not be appealable. The Planning Board shall hear and decide any appeal on a de novo basis.
1. PURPOSE

The purpose of this ordinance is to protect the health, safety and general well-being of the citizens of Harpswell; enhance and maintain the quality of the environment; conserve natural resources and prevent water and air pollution.

This ordinance also provides for a comprehensive and rational means of minimizing and regulating the disposal of solid waste within the Town of Harpswell. Harpswell recycles and transfers solid waste.

2. DEFINITIONS

As used in the following sections, these words have the following meanings:

2-1 Agricultural Waste means waste that results from agricultural activities (including but not limited to the growing of vegetables, fruits, seeds, nursery crops, poultry, livestock, field crops, cultivated or pasture hay, and farmlot wood products, including Christmas trees) and that are returned to the soils as fertilizer. It includes waste pesticides when generated by a farmer, provided that the farmer triple rinses each emptied pesticides container in accordance with Departmental rules and disposes of the pesticide residues in a manner consistent with the disposal instructions on the pesticide label.

2-2 Business means any entity performing a service or selling food or other goods.

2-3 Commercial Hauler means any hauler that is compensated for hauling solid waste or that hauls commercially generated solid waste including demolition and construction debris and restaurant waste. Persons hauling solid waste for apartment buildings, private homes, motels, holes and inns, and any and all business shall be considered commercial haulers.

2-4 Commercial Waste means any solid waste that is generated by stores, offices, restaurants, warehouses, and other non-manufacturing, non-processing activities. Commercial waste does not include household, process, industrial or special wastes.

2-5 Contractor means any person who agrees with another to undertake special work according to price, specifications and terms agreed on including those engaged in the construction, alteration or repair of buildings or other structures, sidewalks or driveway pavements and those engaged in lawn maintenance, landscaping, plowing and moving.
2-6 Demolition and construction debris means lumber, bricks, masonry, asphalt, shingles, insulation and all other similar materials. It does not include asbestos.

2-7 Electronic waste means an electronic device containing circuit boards, capacitors, resistors or transistors.

2-8 Facility means the Recycling Center and Transfer Station owned and operated by the Town of Harpswell.

2-9 Household refuse means refuse commonly generated by usual domestic activities. It does not include material defined as demolition and construction debris, furniture, white goods or tires.

2-10 Person means any individual, association, partnership, firm, corporation or other entity or their agents.

2-11 Process waste means that waste which is generated in the process of reducing the volume of, or changing the chemical or physical characteristics of solid waste.

2-12 Recyclable materials means solid waste that has useful physical or chemical properties and can be reused or recycled for the same or other purposes. Recyclable material includes newspapers; magazines; paperboard; paper products; cardboard; plastics; metal; foil; and glass.

2-13 Resident means any person who is domiciled within the Town of Harpswell or within any town that may be a party to a solid waste agreement with the Town of Harpswell. It shall include persons who may own, rent or lease a single-family unit seasonally.

2-14 Restaurant waste means solid waste generated by restaurants, commercial dining facilities and ready-to-eat food vending establishments.

2-15 Solid Waste means useless, unwanted or discarded solid material with insufficient liquid content to be free flowing, including but not limited to rubbish, garbage, scrap materials, junk, refuse and construction and demolition debris. It does not include septic or agricultural waste.

2-16 Special Waste, means any material that, by nature of the physical quantity or condition, or any combination thereof, may disrupt or impair effective waste management or threaten public health and may require special handling, transportation and disposal procedures.

2-17 White Goods means refrigerators, stoves, freezers, washing machines, cloths dryers, air conditioners and other large, predominantly metal household appliances.

2-18 Wood Waste means brush, stumps, lumber, bark, wood chips, shavings, slabs, edgings, slash, sawdust and wood from production rejects, that are not mixed with other solid or liquid waste. For the purposes of this definition, “lumber” is entirely made of wood and is free from metal, plastics and coatings.
2-19 Yard Waste means grass clippings, leaves, and other vegetal matter other than wood wastes and land clearing debris.

3. **ADMINISTRATION**

3-1 Rules and regulations: The Selectmen shall establish the fees, rules and regulations required for the municipality to conform to the standards and requirements set forth in the ordinance, subject to any requirements for public hearings. Rules and regulations shall conform to all pertinent regulations or directives of all local, county, state and federal agencies which may have jurisdiction. The Town Administrator, Recycling Center Manager, and other persons designated by the Town Administrator or Recycling Center Manager have the authority to ensure compliance with the rules established by the Board of Selectmen in accordance with the provisions of this ordinance and recommend fines as established by the Board of Selectmen.

4. **PERMIT REQUIREMENTS AND FEES**

4-1 Permit required: Any resident or property owner disposing of solid waste at the facility shall be required to obtain an annual permit from the Town Office or Recycling Center at no cost. Proof of residency or property ownership is required at time of issuance of permit. The Recycling Center Manager and/or the designated representative has the authority to refuse service to those residents who do not have a permit.

4-2 Commercial Permits: Any commercial hauler disposing of solid waste at the facility shall be required to obtain a permit from the Recycling Center Manager on an annual basis. Commercial haulers must certify that he/she is depositing only waste from Harpswell residents or businesses. The commercial hauler must also certify that restaurant wastes, animal wastes and electronic wastes are not being deposited in the household waste compactors. Such items must be transported to the Transfer Station and appropriate fees assessed. The Commercial Hauler must certify that the hauler’s operation is in compliance with the provisions established in the Commercial Trash Haulers Rules established by the Board of Selectmen.

4-3 Permit displayed: The disposal permit must be attached to a vehicle in a conspicuous place to gain access to the facility.

4-4 Permit fees: The Selectmen shall set fees for the following permits:

- **4-4-1 Commercial Haulers**
- **4-4-2 Contractors**
- **4-4-3 Businesses (not serviced by commercial haulers)**

4-5 Load Fees: The Selectmen shall set fees for the following:

- **4-5-1 A Per-Load fee, separated or unseparated, for brush, construction and demolition debris, commercial waste.**
4-5-2 A per-gallon charge for waste oil

4-5-3 Tires

4-5-4 White Goods

4-5-5 Storage Batteries

4-5-6 Electronic Waste

4-5-7 Separated/Unseparated Household Waste

4-5-8 Other Items

4-5-9 Metal

4-5-10 A Per-Load Fee, separated or unseparated, of any combination of the above items.

5. DISPOSAL REQUIREMENTS

5-1 Responsibility: It is the responsibility of each resident to provide proper disposal of all solid waste generated on his/her premises in accordance with the requirements of this ordinance.

5-2 Separation of solid waste: To reduce costs associated with disposal of solid waste, the Town of Harpswell requires separation of solid waste delivered to the facility by residential users and commercial haulers. Any solid waste that is not separated according to the requirements of this section shall be subject to the penalties for unseparated trash set forth in section 9.

5-2-1 Where ambiguity exists (as is the case of Special Wastes) the Recycling Center Manager has the authority to determine the proper disposal methods.

5-2-3 Subject to inspection: All materials presented at the facility shall be subject to inspection prior to disposal to determine proper disposal methods and ensure that unacceptable materials are not received. The inspector shall make himself/herself known to the resident or commercial hauler. The inspector may open bags or other objects containing solid waste to examine the contents for recyclable materials, hazardous materials or unaccepted materials and to determine the nature of contents and ensure waste materials are delivered to the proper facility and/or location. All disposed material is considered to be the property of the Town of Harpswell.

5-2-4 Recyclable materials: It is the intent of the Town of Harpswell to recycle waste as the primary step in responsible waste management, before resorting to other disposal methods. All residents and businesses shall recycle waste to the greatest extent practical in order to reduce the disposal cost and environmental impact of solid waste. It shall be the responsibility of each household, governmental and commercial establishment to separate and prepare recyclable materials from all other types of waste, and to see that these materials are transported to the facility. A current list of acceptable recyclable materials is available at the Town Office, Recycling Center Office and on the Town’s Website. The list is subject to change as a result of industry standards, state/federal
regulations and market capability changes. The Recycling Center Manager is responsible to ensure
the list is maintained and updated regularly.

5-3 Commercial waste requirements: Commercial haulers are responsible for ensuring that solid waste
they deliver to the facility is drained of liquid, properly separated and meets all requirements of
this ordinance.

5-4 Delivery of wastes: All wastes delivered to the facility must be transported in a manner to prevent
littering.

5-5 Disposal only at facility: No person shall dispose of solid waste of any kind anywhere within the
limits of the Town of Harpswell except at the facility. This does not include wood waste or yard
waste.

5-6 The Compactor System at the Recycling Center is for the disposal of household waste only. Solid
waste generated by businesses and commercial entities, delivered by the same business or
commercial entity itself or through a commercial hauler as defined herein, shall be disposed through
the Transfer Station and all assessed fees shall be paid. This paragraph does not apply to
commercial haulers delivering household waste as defined herein.

6. RECYCLING CENTER AND TRANSFER STATION OPERATIONS

6-1 Hours: The hours of operation for the facility shall be set by the Selectmen.

6-2 Access: Access to the facility shall be only during the hours of operation unless upon express
permission from the Selectmen.

6-3 Disposal: Wastes shall be disposed in separate designated areas.

6-4 Scavenging: No person may remove any article or object, which has been disposed at the facility
without permission of the Recycling Center Manager or designee. All such items removed shall be noted
by date, resident, and item on log sheets located at the Transfer Station scale house or the Recycling
Center Office.

7. UNACCEPTABLE WASTE

7-1 Waste Originating out of town: Only wastes generated within the boundaries of the Town of
Harpwell and properly sorted will be accepted at the facility. It is illegal to dispose of wastes originating
from another municipality at the facility.

7-2 Unacceptable categories: The following categories of wastes will not be accepted at the facility.
This list is subject to changes concurrent with state and federal regulations. The Recycling Center Staff
shall provide guidance regarding the proper disposal of the below listed materials.

7-2-1 Hazardous wastes as defined by 38 M.R.S.A. § 1303-C, as may be amended

7-2-2 Medical or infectious wastes as defined by the State of Maine.
7-2-3 Explosives, including bullets and gunpowder, shotgun shells, marine and road flares, fireworks, firecrackers. Compressed gas cylinders containing propane, oxygen, acetylene and other flammable gases, unless they are emptied and the valves opened.

7-2-4 Sewage treatment and septic tank residues.

7-2-5 Animal and agricultural wastes in large quantities (as determined by the facility manager).

7-2-6 Radioactive materials

7-2-7 Automobiles

7-2-8 Dead Animals

7-2-9 Gasoline, Kerosene, Diesel Fuel, grease, bilge water and Antifreeze.

7-2-10 Heating Oil Tanks, unless they are drained and cut in half before being accepted.

7-2-11 Ash. Ash from fireplaces, stoves, burned houses, brush piles, other structures or other burned materials.

7-3 Wet Wastes: Solid waste that is not sufficiently drained of liquid when delivered to the facility will not be accepted.

8. HOME STORAGE AND DISPOSAL

8-1 Storage: All residents must ensure that solid waste stored on their premises does not create a nuisance.

8-2 Composting: While solid waste generated in households and commercial establishments should be taken to the facility for recycling and ultimate disposal, home composting of kitchen wastes, yard and garden wastes and other organic materials is encouraged.

9. PENALTIES, ENFORCEMENT AND REMEDIAL ACTION

9-1 Violations: The Selectmen shall review any alleged violation of this ordinance or rules established by the Board of Selectmen in accordance with the provisions of this ordinance and take appropriate action as required. The Selectmen shall institute any necessary proceedings to enforce this ordinance.

9-2 Enforcement: Enforcement for this ordinance is the responsibility of Law Enforcement Officers for the Town of Harpswell and the Selectmen.

9-3 Penalties:

9-3-1 Any person found in violation of any of the provisions of this ordinance shall subject to a civil penalty in an amount not less than $50 nor more than $500 for each offense, except the minimum penalty for a second offense within a twelve month period shall not be less than $100. A commercial hauler which is found to be in violation for a second time within a twelve month period
shall also have its license revoked by the Selectmen for a period of not less than three months. A third offense shall result in permit revocation.

9-3-2 Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense.

9-3-3 All civil penalties shall accrue to the Town of Harpswell.

9-3-4 Remedial Action: All persons found in violation of this ordinance are responsible for any remedial action and clean-up costs incurred by the Town. Remedial action must proceed in a timely fashion upon notification by the Selectmen.

10. CONSTRUCTION

10-1 Severability: The provisions of this ordinance are severable. If any section, subsection, sentence, provision or part of this ordinance is held invalid, or unconstitutional, the remaining provision of this ordinance shall not be affected or impaired.

10-2 Supersession: This ordinance supersedes and replaces all similar or comparable ordinances, policies or decisions previously enacted within the municipality and will remain in effect until revoked or superseded by action of the voters the municipality.

10-3 Amendments: the Selectmen shall propose any amendments to this ordinance to the voters of Harpswell at a town meeting. Approval of any amendments, revision, or deletions rests exclusively with the voters of the municipality.
TOWN OF HARPSWELL
STREET OPENING ORDINANCE

Enacted March 8, 2003
Section I. Purpose.

The purpose of this ordinance is to regulate the use of public right-of-ways owned or controlled by the Town in the interest of public safety and convenience and the operation and protection of public infrastructure. Excavation and restoration standards are required to preserve the integrity, operational safety and function of public right-of-ways owned or controlled by the Town.

Section II. Definitions.

The following words and phrases, when used in this ordinance, shall have the following meanings respectively ascribed to them:

Town shall mean the Town of Harpswell, Maine.

Applicant shall mean a person applying for a permit required by this ordinance.

Code Enforcement Officer shall mean the duly appointed Code Enforcement Officer of the Town or his/her designee.

Emergency shall mean any event that may threaten public health or safety where action is necessary to prevent personal injury, death or the loss or disruption of an existing vital service. The burden of proof of such emergency rests with the applicant.

Excavation shall mean any opening in the surface of a public place made in any manner whatsoever, except an opening in a lawful structure below the surface of a public place, the top of which is flush with the adjoining surface and so constructed as to permit frequent openings without injury or damage to the public place.

Facility shall mean pipe, pipeline, tube, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, wire tower, pole, pole line, anchor, cable, junction box, or any other material, structure, or object of any kind or character, whether enumerated herein or not, which is or may be lawfully constructed, left, placed or maintained in, upon, along, across, under, or over any public place.

Newly constructed, reconstructed or repaved streets shall mean any street which has been newly constructed, reconstructed or repaved within the past five (5) years.

Permit Holder shall mean a person who has obtained a permit as required by this ordinance.
**Person** shall mean an individual, partnership, municipality, state, county, political subdivision, utility, joint venture or corporation and includes the employer of an individual.

**Public place** shall mean the entire width between the right of way lines of every street, way or place of whatever nature when any part thereof is owned or controlled by the Town and dedicated to public use for purposes of traffic. This term includes any state highway or state aid highway that is maintained by the Town.

**Road Commissioner** shall mean the duly elected Road Commissioner of the Town or his/her designee.

**Substructure** shall mean any pipe, conduit, duct, tunnel, manhole, vault, buried cable, or wire, or any other similar structures located below the surface of any public place.

**Utility** shall mean a private company, corporation or quasi-municipal corporation under the direction and control of the Public Utilities Commission.

**Section III. Street Opening Permit Required.**

A. **Permit Required.** No person, except utilities performing emergency excavations, shall make any excavation in any public place or fill any excavation in any public place without first obtaining an opening permit from the Code Enforcement Officer. All such excavations are governed by 23 M.R.S.A. §§ 3351 through 3360-A, as may be amended from time to time, and this ordinance.

B. **Excavation Site.** Prior to any excavation, applicants shall pre-mark the proposed area of excavation in white paint, or as otherwise established by Dig Safe (see Maine’s underground facility damage prevention statute, 23 M.R.S.A § 3360-A), prior to notifying Dig Safe.

C. **Application Required.** No opening permit shall be issued unless a written application on a form provided by the Town for the issuance of an opening permit is submitted to the Code Enforcement Officer. The written application shall state the name, address and 24 hour emergency phone number of the applicant; the name of the public place to be excavated and street number; the beginning date of proposed work; the type of work to be done; the purpose of the excavation; the method of excavation; signatures of utility approval; and a diagram of the location and size of the cuts to be made as part of the planned excavation on the form. The applicant must agree to comply with the Dig Safe law, 23 M.R.S.A. § 3360-A, as may be amended from time to time, and any separate State of Maine highway opening permit required by 23 M.R.S.A. § 54, as may be amended from time to time.
Utilities, although having to submit an application for a permit to the Code Enforcement Officer, may contact other utilities involved by phone and the authorized person doing so shall sign the application in the appropriate place. All applications shall be presented to the Code Enforcement Officer for the issuance of an opening permit within thirty (30) days from the date of the last utility approval. After the expiration of this thirty (30) day period, such application shall become null and void and shall have to be renewed.

D. Permit Fee/Deposit for Resurfacing. A fee as specified in the *Street Opening Fee Schedule* established by the Board of Selectmen shall be paid for each issuance and for each renewal of a street opening permit. The applicant shall deposit with the Town a resurfacing fee to cover the cost of the work to be performed. Any resurfacing fee shall not exceed the reasonable cost of replacement of the excavated pavement and base material. When any proposed excavation is to be made in any paved public place and the pavement is laid on a concrete base, the extra width of such excavation required under Section VII(A) of this ordinance shall be charged to the person applying for the permit.

All such fees paid to the Town must be regularly accounted for in the Town Treasurer’s report to the Board of Selectmen and constitute a special fund for the repaving of excavations, repair of any roadway adjacent to the excavations and inspections. When such excavations are repaired by the Town, the cost must be charged to the special fund.

E. Proof of Insurance. Applicants for opening permits shall supply to the Code Enforcement Officer a certificate of insurance listing the Town of Harpswell as an additionally named insured. Coverage shall be for not less than $400,000, which amount will be increased from time to time, but only if required to meet the minimum provisions of the Maine Tort Claims Act as it may be amended.

F. Proof of Right, Title or Interest. Applicants for opening permits shall supply to the Code Enforcement Officer written evidence in the form of an unqualified real estate title opinion from an attorney licensed to practice in Maine of the legal interest of the property owner to engage in the proposed work to be done in the public place. Such title opinion shall address not only the applicant’s ownership rights but also the right of the applicant to install any facility in, upon, along, across, under, or over the public place. To the extent that the proposed work to be done in the public place is on property that is not owned in fee by the Town of Harpswell, the applicant shall provide written evidence from a person who is qualified by experience and training to opine on excavation matters to the Code Enforcement Officer that the excavation shall not unreasonably interfere with any Town obligation to keep the public place safe and convenient for travel. The Code Enforcement Officer shall submit all such evidence to the Town Attorney for review and approval.
To the extent that such legal review indicates that the proposed work to be done
requires that the applicant have an easement in perpetuity from the Town of Harpswell
for the construction, operation, replacement and maintenance of the facility, the applicant
must first seek and obtain the required easement from Town meeting. Factors that may
be considered by Town meeting in determining whether to grant such an easement
include, but are not limited to, the following:

(i) the proposed work to be done;
(ii) the proposed method of excavation;
(iii) the proposed method of installation of the facility;
(iv) the proposed method of maintenance of the facility;
(v) the life span of the facility;
(vi) the number of users of the facility;
(vii) the financial and technical ability of the person on whose behalf the facility
    is being installed;
(viii) the willingness of the person on whose behalf the facility is being installed
to maintain adequate insurance against loss or damage to the facility;
(ix) the willingness of the person on whose behalf the facility is being installed
to defend, indemnify and hold harmless the Town, its officers, agents and
    employees, against any and all claims arising from any claims of such
    liability; and
(x) the willingness of the person on whose behalf the facility is being installed
to provide the Town with the right, but not the obligation, to enter the
    premises and have any malfunction adequately remedied and to provide for
    the Town to recover any actual and direct expenses, including reasonable
    attorney’s fees, incurred by the Town to remedy the malfunction by either a
    civil action against the person on whose behalf the facility is being installed
    or the assessment of a special tax against the real estate of the person on
    whose behalf the facility is being installed.

G. Permit Issuance. Opening permits shall only be issued from April 1 to
November 15, unless an emergency or special circumstance exists. An explanation shall
be given to both the Code Enforcement Officer and the Road Commissioner explaining
the emergency or special situation prior to the issuance of a permit during the time period
November 16th through March 31st of the following year. Any oral explanation shall be
followed up by a written explanation within two (2) working days.

After an excavation is commenced, the Permit Holder shall prosecute with
diligence and expedite all excavation work covered by the opening permit and shall
promptly complete such work and restore the public place as specified in this ordinance.
Any permit issued shall specify the time period within which the Permit Holder must
complete the work and restore the public place as specified in this ordinance. The Permit
Holder shall perform such restoration work so as not to obstruct, impede or create a safety hazard to public travel by foot or vehicle.

Section IV. Excavation.

Excavation work must be started no later than thirty (30) days from the date of issue of the opening permit. After the expiration of this thirty (30) day period, such permit shall become null and void and shall have to be renewed. Notification shall be made to both the Code Enforcement Officer and the Road Commissioner on the actual day the work will begin. No work shall be done under the permit on Saturdays, Sundays or legal holidays, unless approved by both the Code Enforcement Officer and the Road Commissioner. During all excavations, one-way traffic shall be maintained for emergency vehicles. Temporary exceptions may be made only by the area Fire Chief after consultation with the Road Commissioner and only when another means of access is available.

Section V. Relocation and Protection of Utilities.

The Permit Holder shall not interfere with any existing facility without the written consent of the Code Enforcement Officer, Road Commissioner, and the owner of the facility. If it becomes necessary to relocate an existing facility, this shall be done by its owner. No facility owned by the Town shall be moved to accommodate the Permit Holder unless the cost of such work is borne by the Permit Holder and covered in full in advance. The cost of moving privately owned facilities shall be similarly borne by the Permit Holder unless it makes other arrangements with the person owning the facility. The Permit Holder shall support and protect by timbers or otherwise all pipes, conduits, poles, wires or other apparatus which may be in any way affected by the excavation work and do everything necessary to support, sustain and protect them under, over, along or across the work. The Permit Holder shall secure approval of method of support and protection from the owner of the facility. In case any of the pipes, conduits, poles, wires or apparatus should be damaged, and for this purpose pipe coating or other encasement or devices are to be considered as part of a substructure, the Permit Holder shall promptly notify the owner thereof. All damaged facilities shall be repaired by the person owning them and the expense of such repairs shall be charged to the Permit Holder. It is the intent of this section that the Permit Holder shall assume all liability for damage to facilities and any resulting damage or injury to anyone because of such facility damage and such assumption of liability is a contractual obligation of the Permit Holder. The only exception will be such instances where damage is exclusively due to the negligence of the owning utility. The Town shall not be made a party to any action because of this section. The Permit Holder shall inform itself as to the existence and location of all underground facilities and protect the same against damage.
Section VI. Protection of Public Property.

The Permit Holder shall not remove, even temporarily, any trees or shrubs which exist in the public place without first obtaining the written consent of the appropriate Town department or Town official having control of such property.

Section VII. Pavement Breaking in Public Places.

A. All excavations on paved public place surfaces shall be pre-cut in a neat straight line with pavement saws or asphalt cutters. When any excavation is made in any paved public place and the pavement is laid on a concrete base, the excavation must have the pavement and concrete cut back on each side of the excavation ditch a distance of 8 inches, and in issuing the permits for cutting the pavement, this extra width must be charged to the person applying for the permits.

B. The use of pavement breakers is prohibited.

C. Cutouts of the trench lines must be normal or parallel to the trench line.

D. Pavement edges shall be trimmed to a vertical face and neatly aligned with the center line of the trench.

E. Unstable pavement shall be removed over cave-outs and overbreaks and the subgrade shall be treated as the main trench.

F. The Permit Holder shall not be required to pay for repair of pavement damage existing prior to the excavation unless his or her cut results in small floating sections that may be unstable, in which case the Permit Holder shall remove the unstable portion and the area shall be treated as part of the excavation.

G. When three (3) or more street openings are made in sequence (fifteen (15) feet or less, center to center, between each adjacent opening), the Permit Holder shall neatly cut and remove the area of pavement between these adjacent openings and shall patch as one trench.

H. On concrete sidewalks, all cuts shall be made from the nearest joint or score line on one side of the excavation to the nearest joint or score line on the other side of the excavation.

Section VIII. Care of Excavated Material.

A. All material excavated from trenches and piled adjacent to the trench or in any street shall be piled and maintained in such manner as not to endanger those working in the trench, pedestrians or users of the streets, and so that as little inconvenience as
possible is caused to those using streets and adjoining property. Where the confines of the area being excavated are too narrow to permit the piling of excavated material beside the trench, the Road Commissioner shall have the authority to require that the Permit Holder haul the excavated material to a storage site and then rehaul it to the trench site at the time of backfilling.

B. It shall be the Permit Holder’s responsibility to secure the necessary permission and make all necessary arrangements for all required storage and disposal sites.

C. All material excavated shall be laid compactly along the side of the trench and kept trimmed so as to cause as little inconvenience as reasonably possible to vehicular and pedestrian traffic, or as specified by the Road Commissioner. Whenever necessary in order to expedite the flow of traffic or to abate the dirt or dust nuisance, boards or bins may be required by the Road Commissioner to prevent the spreading of dirt into traffic lanes.

Section IX. Backfilling of Excavation.

Crushed stone or sand shall be used to bed and backfill all underground utilities and shall be thoroughly compacted under, around and to a minimum of 6 inches above the structure. After being properly bedded, the backfill material for all other substructures shall be of a fine material, free from lumps, frozen materials and no stones larger than four (4) inches in diameter. All backfill materials shall be placed in eight (8) to ten (10) inch lifts and thoroughly compacted with approved mechanical compactors. Within eighteen (18) inches of the subgrade of the pavement, backfill shall meet MDOT specification Type B and be left four (4) inches below the surface. Within twenty-four (24) hours after the trench has been backfilled, four (4) inches of cold bituminous concrete shall be placed over the gravel and compacted, or permanent repairs completed pursuant to Section XII of this ordinance. The Road Commissioner may require soil tests to be furnished by a recognized soil testing laboratory or registered professional engineer specializing in soil mechanics when, in his/her opinion, backfill for any excavation is not being adequately compacted. In order for the resurfacing to be permitted, such tests must show that the backfill material meets the minimum requirements as prescribed by the Road Commissioner. The expense of such tests shall be borne by the Permit Holder.

Section X. Trenches.

The maximum length of open trench in an excavation permissible at any time shall be two hundred (200) feet, and no greater length shall be opened for pavement removal, excavation, construction, backfilling, patching or any other operation without the written permission of the Road Commissioner.
Section XI. Excavations in Reconstructed Streets.

Whenever the Town has developed plans to reconstruct a public place, the Town or its representative shall give written notice thereof to all abutting property owners, to the Town departments, and to all utilities that have or may wish to lay pipes, wires or other facilities in or under the public place. Upon receipt of such written notice, such person shall have sixty (60) days in which to install or lay any such facility. If an extension of time is needed by a person for the installation of such facilities, the person shall make a written application to both the Code Enforcement Officer and the Road Commissioner explaining fully the reasons for requesting such an extension of time. At the expiration of the time fixed and after such public place has been reconstructed, no permit shall be granted to open such public place for a period of five (5) years unless an emergency condition exists or unless the necessity for making such installation could not reasonably have been foreseen at the time such notice was given.

If the Town issues a permit to open a public place within five (5) years after that public place was paved or substantially repaired, the Town may require the Permit Holder to relay the full width of the road surface on both sides of the cut for a distance of 20 feet from the furthest outside edges of the cut. If that repair overlaps the edge of a repair from a previous opening, the Road Commissioner may require the Permit Holder to relay the full width of the road to the furthest edge of that previous repair. The Road Commissioner may prescribe the depth and method of restoring the pavement based upon the class of the street under the Town's Road Ordinance, except that in no case may the depth of the restored pavement be less than 1 ½ inches. If the Town relays the pavement, the cost of relaying the pavement, including materials, labor and inspection, must be paid out of any money in the municipal treasury standing to the credit of the regular fund for this purpose.

Section XII. Resurfacing of Public Places.

Prior to issuance of any permit under this ordinance, the Code Enforcement Officer shall specify who shall perform the permanent resurfacing of the public place.

A. Temporary resurfacing by the Permit Holder. The top surface of backfill shall be covered with four (4) inches compacted depth of bituminous temporary resurfacing material by the Permit Holder. Such temporary paving material shall be cold mix, except that the Permit Holder may use or the Road Commissioner may require hot mix. All temporary paving material shall be compacted so that it is hard enough and smooth enough to be safe for pedestrian travel over it, as well as for vehicular traffic to pass safely over it at a legal rate of speed. The Permit Holder shall maintain the temporary paving and shall keep the same safe for pedestrian and vehicular traffic until the excavation has been resurfaced with permanent paving by the Town, except if it is not
possible to maintain the surface of the temporary paving in a safe condition for pedestrian and vehicular traffic, then the Permit Holder shall maintain barriers and lights.

B. **Permanent resurfacing by the Town.** Permanent resurfacing of excavations in public places shall be made by the Town. Actual square yards opened or disturbed will be measured by the Road Commissioner or Code Enforcement Officer and the Permit Holder will be billed for the difference between the estimated fee paid and the final fee as determined by the measurement of the opening. Additional costs will be billed as set forth in Section XV of the ordinance.

C. **Permanent resurfacing by the Permit Holder.** The Town, at its option, may allow the Permit Holder to permanently resurface that portion of the street surface damaged by the Permit Holder’s excavation. In such event, permanent resurfacing shall be done in a manner and under specifications prescribed by the Town and subject to inspection by the Town and shall be completed within a period of ninety (90) days after such authorization to complete final resurfacing. If such permanent resurfacing is satisfactory to the Town, all resurfacing fees (excluding any permit fee or inspection fees) will be refunded to the Permit Holder. The Permit Holder shall, for a period of three (3) years thereafter, be fully liable for all defects in materials and workmanship relating to such resurfacing and shall promptly repair or replace the same upon notice of the Road Commissioner and to the satisfaction thereof.

**Section XIII. Incurred Expenses Through Repairing and Backfilling by Town.**

If the work or any part thereof mentioned in this ordinance for repairing or backfilling the trenches or excavations shall be unskillfully or improperly done, the Town shall cause the same to be skillfully and properly done, and shall keep an account of the expense thereof, and in such case such person shall pay the Town an amount equal to the whole of the expense incurred by the Town with an additional amount of fifty (50) percent. Thereafter, upon completion of the work and the determination of the costs thereof, the Town shall issue no further or new permits to such person until it shall receive payment of such amount.

**Section XIV. Inspection.**

The Road Commissioner or Code Enforcement Officer shall make such inspections as are reasonably necessary in the enforcement of this ordinance. In the event the Town provides an on-the-job inspector to supervise excavation, backfilling of temporary or permanent repairs or resurfacing, the Permit Holder shall be charged an inspection fee equal to the appropriate hourly rate of the inspector, plus twenty-five (25) percent overhead for the services of such inspector.
Section XV. Billing Procedures.

For any amounts due under Section IX, XII, XIII or XIV of this ordinance, a bill will be mailed to the Permit Holder. Bills rendered in accordance with this section shall be due and payable by the Permit Holder immediately upon receipt thereof. If a Permit Holder does not pay any such bill within thirty (30) days after receipt, the Town shall issue no further permits to any such Permit Holder until it receives payment of such outstanding bill.

Section XVI. Violations.

Any person failing to comply with or violating any provision of this ordinance shall be served by the Code Enforcement Officer (who shall first consult with the Road Commissioner prior to issuing any written notice under this paragraph) with written notice stating the nature of the failure or violation and providing a reasonable time limit for the necessary corrective actions. Such person shall, within the period of time stated in such notice, permanently cease or correct all failures or violations.

In order to ensure public safety, both the Code Enforcement Officer and the Road Commissioner shall have the right to verbally notify and require immediate corrective actions of any person whose failure to comply with this ordinance could cause a safety hazard. Any person who shall continue any failure or violation beyond the time limit required for compliance in any notice given pursuant to this ordinance shall be in violation of this ordinance.

Any person violating any of the provisions of this ordinance shall be liable to the Town for any expense, loss or damage occasioned by the Town by reason of such violation. The Town may institute any and all actions or proceedings either legal or equitable that may be appropriate or necessary for the enforcement of the provisions of this ordinance, the same to be brought in the name of the Town.

Any violation of this ordinance that is also a violation of 35-A M.R.S.A. §§ 2509 or 2511 or a violation of 23 M.R.S.A. §§ 3353 or 3355 shall subject the person to a fine as provided in said statutes, as said statutes may be amended from time to time. Any violation of this ordinance other than the violations of state law prescribed in the preceding sentence shall subject the person to a $50 fine per day for each day that a violation continues. Each day that a violation is permitted to exist after notification thereof shall constitute a separate offense.

Any person who continues to violate any section of this ordinance shall receive no further permits until such time as the Town is satisfied that the person shall comply with the terms of this ordinance.
Section XVII. Appeals Process.

Whenever a person shall deem themselves aggrieved by an order made by the Code Enforcement Officer or the Road Commissioner, the person may file an appeal to the Board of Selectmen within ten (10) days of the date of the order, and the person shall be afforded a hearing on the matter before the Board of Selectmen or its designee, and unless by its authority the aggrieved order is revoked, such order shall remain in force and be forthwith complied with by the person.

The Board of Selectmen shall consider the appeal and determine whether the Code Enforcement Officer or the Road Commissioner erred in the interpretation or application of the ordinance. In considering an appeal, the Board of Selectmen shall give due consideration to the purposes of the ordinance in preserving public safety and convenience, integrity of public infrastructure and the operational safety and function of public right-of-ways.

The Board of Selectmen shall inform the person in writing of its decision and the reasons thereof. Any decision of the Board of Selectmen under this section may be appealed to Superior Court within thirty (30) days of the decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

Section XVIII. Conflict with Other Enactments.

In the event that this ordinance conflicts with any other law, ordinance, rule or regulation, the provision of the law, ordinance, rule or regulation that imposes the greater restriction shall prevail.
TOWN OF HARPSWELL

SUBDIVISION ORDINANCE

Approved March 16, 1996
Amended March 6, 1999
Amended March 11, 2000
Amended August 23, 2001
Amended March 16, 2002
Amended November 23, 2002
Amended March 8, 2003
Amended May 20, 2004
Amended March 11, 2006
Amended March 10, 2007
Amended March 20, 2010
Amended March 9, 2013
Amended March 15, 2014
Amended March 14, 2015
Amended March 11, 2017
Amended March 10, 2018

(This replaces the Subdivision Ordinance reenacted March 19, 1990)

Citizen’s Note: Generally, a subdivision is the division of a tract or parcel of land into three (3) or more lots within any five (5) year period in accordance with State Law (30-A M.R.S.A. §4401[4]) as that subsection may be amended from time to time. For a specific determination, consult the Code Enforcement Officer.
# Table of Contents

Section 1. Purpose........................................................................................................... 4

Section 2. Authority and Administration .................................................................. 4

Section 3. Applicability................................................................................................. 4

Section 4. Availability.................................................................................................... 5

Section 5. Severability.................................................................................................. 5

Section 6. Conflict with Other Ordinances................................................................. 5

Section 7. Waiver and Modification of Subdivision Submissions............................... 5

Section 8. Submission of Documents and Review Schedule....................................... 5
   8.1. Application Review Process................................................................................. 5
   8.2. Applications......................................................................................................... 7
   8.3. Submissions......................................................................................................... 8
   8.4. Notification......................................................................................................... 17
   8.5. Determination of Complete Application........................................................... 17
   8.6. Site Visits............................................................................................................ 17
   8.7. Public Hearing.................................................................................................... 18
   8.8. Planning Board Review..................................................................................... 18
   8.9. Planning Board Approval or Denial of the Subdivision...................................... 18
   8.10. Recording of the Approved Subdivision Plan.................................................. 19
   8.11. Plan Revisions after Approval....................................................................... 19
   8.12. Phasing of Development................................................................................ 19
   8.13. Lot Line Amendments..................................................................................... 20

Section 9. Approval Standards..................................................................................... 20
   9.1. Conformance....................................................................................................... 20
   9.2. Municipal Services............................................................................................ 20
   9.3. Preservation of the Landscape......................................................................... 20
   9.4. Lots.................................................................................................................... 20
   9.5. Land Not Suitable for Development............................................................... 25
   9.6. Required Improvements.................................................................................. 25
   9.7. Erosion and Sedimentation Control............................................................... 27
   9.8. Utilities.............................................................................................................. 27
   9.9. Construction in Flood Hazard Areas............................................................... 28
   9.10. Impact on Wetlands....................................................................................... 28
   9.11. Impact on Groundwater................................................................................. 28
   9.13. Offshore Islands............................................................................................. 30
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.14</td>
<td>Aesthetic, Cultural, and Natural Values</td>
<td>30</td>
</tr>
<tr>
<td>9.15</td>
<td>Traffic</td>
<td>31</td>
</tr>
<tr>
<td>9.16</td>
<td>Homeowners/Landowners Association</td>
<td>32</td>
</tr>
<tr>
<td>9.17</td>
<td>Community Docks</td>
<td>32</td>
</tr>
<tr>
<td>9.18</td>
<td>Workforce Housing</td>
<td>33</td>
</tr>
<tr>
<td>10.1</td>
<td>Requirement</td>
<td>33</td>
</tr>
<tr>
<td>10.2</td>
<td>Form of Guarantee</td>
<td>33</td>
</tr>
<tr>
<td>10.3</td>
<td>Amount of Guarantee</td>
<td>33</td>
</tr>
<tr>
<td>10.4</td>
<td>Release of Guarantee</td>
<td>34</td>
</tr>
<tr>
<td>10.5</td>
<td>Default</td>
<td>34</td>
</tr>
<tr>
<td>11.1</td>
<td>Public Acceptance of Streets, Easements, or Open Space</td>
<td>34</td>
</tr>
<tr>
<td>12.1</td>
<td>Enforcement</td>
<td>34</td>
</tr>
<tr>
<td>13.1</td>
<td>Expiration of Subdivision Plan Approval</td>
<td>35</td>
</tr>
<tr>
<td>14.1</td>
<td>Appeals</td>
<td>35</td>
</tr>
<tr>
<td>15.1</td>
<td>Editorial Notes</td>
<td>35</td>
</tr>
<tr>
<td>15.2</td>
<td>Validity, Conflict of Ordinances, and Effective Date</td>
<td>35</td>
</tr>
</tbody>
</table>

*THIS UNOFFICIAL TABLE OF CONTENTS IS NOT A PART OF THE ORDINANCE AND IS PROVIDED FOR CONVENIENCE ONLY.*
SECTION 1. PURPOSE
The purpose of this Ordinance is to further the intent of Harpswell's Comprehensive Plan in protecting the safety, health, and quality of the environment, including groundwater resources, and the future quality of life in the Town, and to encourage use of the best planning by private developers. This Ordinance also seeks to establish an orderly, equitable, and expeditious procedure for reviewing subdivision applications and to provide clear standards that encourage orderly growth in the community. To this end the Planning Board shall follow the procedures and criteria in this Ordinance when reviewing subdivision applications and before granting approval shall find that the provisions of this Ordinance and State rules and regulations have been met.

SECTION 2. AUTHORITY AND ADMINISTRATION
2.1. This Ordinance is known as the "Town of Harpswell Subdivision Ordinance", it governs subdivisions within the limits of the Town, and replaces the Town Subdivision Ordinance re-enacted on March 10, 1990. This Ordinance is adopted pursuant to Home Rule Powers as provided for in Article VIII, part 2, section 1 of the Maine Constitution and 30-A Maine Revised Statutes Annotated (M.R.S.A.), § 3001, municipal subdivision law 30-A M.R.S.A. § 4401 et seq., as the same may be amended from time to time.

Throughout this Ordinance there are "Citizen's Notes". These notes shall not be considered part of this Ordinance as adopted by the Town, but shall only be considered as an aid for citizens to use and as a guide to the intent of ordinance provisions and their proper interpretation.

2.2. The Planning Board shall administer this Ordinance.

2.3. If, after review of the Town’s Site Plan Review Ordinance pursuant to 30-A M.R.S.A. § 4401(4)(G), as may be amended from time to time, the Planning Board determines that the Town’s Site Plan Review Ordinance provides for a review and approval process of multi-unit dwellings and their accessory structures at least as stringent as that provided by the Town’s Subdivision Ordinance, then the Planning Board shall review applications for approval of multi-unit dwellings and their accessory structures under the Town’s Site Plan Review Ordinance.

2.4. Definitions
For purposes of this Ordinance, certain terms or words used herein shall be defined as set forth in the Definitions Addendum, as may be amended from time to time.

SECTION 3. APPLICABILITY
This Ordinance applies to all parcels of land proposed for subdivision in accordance with 30-A M.R.S.A. § 4401[4], as that section may be amended from time to time, or division of land within the boundaries of the Town of Harpswell previously subdivided.

For purposes of this Ordinance, a tract or parcel of land means all contiguous land in the same ownership, provided that lands located on opposite sides of a road are not considered separate
tracts or parcels of land unless the road was established by the owner of land on both sides of the road before September 22, 1971.

SECTION 4. 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 a reasonable cost and at the expense of the person making the request. Notice of availability of this Ordinance shall be posted.

SECTION 5. 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, unless otherwise provided by State law.

SECTION 6. CONFLICT 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 shall control unless otherwise provided by state law.

SECTION 7. WAIVER AND MODIFICATION OF SUBDIVISION SUBMISSIONS

The Planning Board may modify or waive any of the preliminary conceptual plan or final subdivision plan submission requirements when it determines that, because of the size of the project or circumstances of the site, these requirements would not be applicable or would be an unnecessary burden on the applicant and that a modification or waiver would not adversely affect the Planning Board’s ability to evaluate whether the application meets the standards of 30-A M.R.S.A. § 4401 et seq., as may be amended from time to time, and Section 6 of this Ordinance. These modifications shall not modify the standards as contained in the Ordinance.

When the Planning Board grants a waiver to any of the submissions required by this Ordinance for a final subdivision plan, the approved subdivision plan shall indicate the waivers granted and the date on which they were granted.

SECTION 8. SUBMISSION OF DOCUMENTS AND REVIEW SCHEDULE

8.1. Application Review Process

8.1.1. Pre-application Procedures

8.1.1.1. Prior to submitting a formal application for subdivision review to the Planning Board, the applicant and/or his/her representative shall attend a preapplication conference with the Town Planner or his/her designee. A preapplication conference is mandatory and an application will not be accepted for processing until a preapplication conference has been held. The preapplication conference shall be informal and informational in nature. There is no fee for a preapplication conference, and such a meeting shall not cause the plan to be a pending application or proceeding under 1 M.R.S.A. §302, as it may be amended from time to time.
The purposes of the preapplication conference are to:

(a) Allow the staff to understand the nature of the proposed subdivision and the issues involved in the proposal;
(b) Allow the applicant to understand the subdivision review process and required submissions and fees;
(c) Allow the staff to provide the applicant with written material about two approaches for subdivision design, the Flexible Lot Size approach and the Two Acre Lot Size approach and to discuss the potential for applying each of these approaches to the proposed subdivision;
(d) Identify potential issues that need to be addressed in future submissions; and
(e) Make the applicant aware of any opportunities for coordinating the development with community policies, programs, or facilities.

8.1.1.2. There are no formal submission requirements for a preapplication conference. However, the applicant should be prepared to discuss the following with the Town Planner:

(a) The proposed site, including its location, size, and general characteristics;
(b) The nature of the proposed subdivision;
(c) Any issues or questions about existing municipal regulations and their applicability to the project; and
(d) Any anticipated requests for waivers from the submission requirements and the basis for the requests.

8.1.1.3. Following the preapplication conference with the Town Planner, the applicant may proceed with preparing and submitting an application for submission to the Planning Board.

8.1.2. Preliminary Conceptual Plan

An applicant for subdivision review, other than a lot line amendment in accordance with Section 8.13, shall prepare and submit to the Planning Board a preliminary conceptual plan and related information for study, and, if necessary, alteration and modification, prior to the submission of a final plan. Preliminary conceptual plans shall comply with the requirements set forth in Section 8.3. The Planning Board review of the preliminary conceptual plan submission shall be informational and shall not result in any formal approval or disapproval of the project by the Planning Board. The Planning Board shall review the submission to determine if the information provides a clear understanding of the parcel’s characteristics and its potential for subdivision and development and if the preliminary conceptual plan is consistent with the development and conservation potential of the parcel. The applicant may request that the review of the preliminary conceptual plan submission be done in two (2) steps to allow feedback from the Planning Board to be considered in the preparation of the conceptual subdivision plan. In this case, the first step is the review of the site inventory and analysis (Section 8.3.1.2) and the second step is the subsequent review of the preliminary conceptual subdivision plan (Section 8.3.1.3). The outcome of the review process shall be a determination by the Planning Board of the issues and constraints that must be addressed in the final
subdivision application including any suggested revisions to the conceptual subdivision plan. The applicant shall not submit the final plan until the applicant has received from the Planning Office written comments summarizing the Planning Board’s review of the preliminary conceptual plan. Review of the preliminary conceptual plan shall not constitute approval of the final plan, but rather it shall be deemed an expression of suitability of the design submitted on the preliminary conceptual plan as a guide to the preparation of the final plan. The Planning Board shall complete its review of the preliminary conceptual plan application within seventy-five (75) days of finding the application to be complete unless the applicant chooses to have the application reviewed in two steps. In this case, the Planning Board shall complete its review of the site inventory and analysis within forty-five (45) days of its initial consideration and its review of the preliminary conceptual plan within sixty (60) days of the initial consideration of the preliminary conceptual plan. All of these time frames may be extended with the consent of the applicant.

8.1.2.1. Preliminary Conceptual Plan Expiration
Within one (1) year of the completion of the review of the preliminary conceptual plan, the applicant shall submit the final plan, which shall be prepared in accordance with Section 8.3, or else said preliminary conceptual plan review shall expire.

8.1.3. Final Plan
A final plan shall comply with the requirements set forth in Section 8.3 and include the following additional items:
(a) Space for the signatures of a legal majority of the Planning Board, the date of approval, and the words “Approved by the Town of Harpswell Planning Board, pursuant to 30-A M.R.S.A. § 4401 et seq., as may be amended from time to time.”;
(b) One (1) or more original drawing meeting the requirements of the Cumberland County Registry of Deeds for the recording of plans;
(c) Identification of all terms and conditions of approval adopted by the Planning Board, including the following standard condition of approval: “The property shown on this plan may be developed and used only as depicted on this approved plan. All elements and features of the plan and all representations made by the applicant in the record of the Planning Board proceedings are conditions of the approval. No change from the conditions of approval is permitted unless an amended plan is first submitted to and approved by the Planning Board”;
(d) Proper identification of the location of all permanent monuments; and
(e) A performance guarantee in accordance with the requirements of Section 10.

8.2. Applications
All applications for a subdivision shall be submitted to the Planning Office at least twenty-one (21) working days in advance of a regularly scheduled Planning Board meeting. The applicant shall provide ten (10) copies of the application, plans, and supporting documentation.

The Planning Office shall issue a dated receipt to the applicant. The Town Planner or his/her designee shall review the submission to determine its compliance with the applicable submission requirements. If the Town Planner deems the application to be provisionally complete for
placement on the Planning Board’s agenda, the application shall be scheduled for the next Planning Board meeting for a formal review of completeness, unless the agenda cannot accommodate the request, in which case, it will be scheduled for the next Planning Board meeting. If the Town Planner deems the application to be incomplete, she/he shall advise the applicant in writing of that determination together with the additional or corrected information required and shall inform the applicant in writing that the application will not be placed on the Planning Board’s agenda until it is complete. If the applicant disagrees with the Town Planner's provisional determination, the applicant may request that the chair of the Planning Board include the application on the Planning Board's next available agenda.

8.3. **Submissions**

The Planning Office shall submit to the Planning Board Chair the ten (10) copies of the complete subdivision plan, application, and a copy of the dated receipt showing when the application was received by the Planning Office.

The Planning Office shall issue a dated receipt, both to the applicant and to the Code Enforcement Office, showing the fact that the plans have been received for consideration.

A complete application shall include:

**8.3.1. Preliminary Conceptual Plan Application**

A complete application for preliminary conceptual plan review shall include four (4) components as follows:

1. A completed application form;
2. A location map in compliance with Section 8.3.1.1;
3. A site inventory and analysis in compliance with Section 8.3.1.2; and
4. A conceptual subdivision plan based on the four (4) step design process as set forth in Section 8.3.1.3.

**8.3.1.1. Location Map**

The location map shall be adequate to show the relationship of the proposed subdivision to adjacent properties, and to allow the Planning Board to locate the subdivision within the Town. The map shall show:

8.3.1.1.1. All areas within one thousand (1,000) feet of the property line of the proposed subdivision;
8.3.1.1.2. Existing subdivisions in the proximity of the proposed subdivision referenced by the Registry of Deeds book and page number;
8.3.1.1.3. Location, names, and widths of existing and proposed rights-of-way;
8.3.1.1.4. Boundaries and designations of zoning districts; and
8.3.1.1.5. An outline of the proposed subdivision and any remaining portion of the applicant's property if the location map covers only a portion of the applicant's entire contiguous holding.
8.3.1.2. Site Inventory and Analysis

The site inventory and analysis is intended to provide both the applicant and the Planning Board and staff with an understanding of the parcel and the opportunities and constraints imposed on its use and development by both the natural and built environment. It is anticipated that this analysis will result in a development plan that reflects the conditions of the parcel and that the areas most suitable for the proposed use will be utilized while those that are not suitable or present significant constraints will be avoided to the maximum extent possible. Therefore, the submission requirements contained herein provide that the applicant submit basic information about the parcel and an analysis of that information.

The site inventory and analysis must contain, at a minimum, all of the following information:

8.3.1.2.1. The names, addresses, and phone numbers of the record owner and the applicant.
8.3.1.2.2. The names and addresses of all consultants working on the project, such as the surveyor, engineer, land planner, site evaluator, wetlands scientist.
8.3.1.2.3. Evidence of right, title, or interest in the property.
8.3.1.2.4. Ten (10) copies of an accurate scale inventory plan of the parcel or the portion of the parcel proposed for subdivision at a scale of not more than one hundred (100) feet to the inch showing as a minimum:

(a) The name of the development, north arrow, date and scale.
(b) The boundaries of the parcel.
(c) The relationship of the parcel to the surrounding area, including nearby conservation land and subdivisions within one thousand (1,000) feet of the parcel.
(d) The topography of the parcel at an appropriate contour interval as determined by the Town Planner or his/her designee depending on the nature of the use and character of the parcel (in most instances, 2' contours will be necessary unless no grading or infrastructure construction is planned).
(e) The major natural features of the parcel and those located within five hundred (500) feet of the parcel, including coastal and freshwater wetlands, significant vernal pools, streams, ponds, floodplains, groundwater aquifers, significant wildlife habitats and fisheries or other important natural features (if none, so state). This information must be based on field determination for the parcel to be subdivided, unless the Planning Board determines that information from available, published sources is adequate to allow the review of the opportunities and constraints of the parcel. The information on conditions on adjacent property may be from available, published sources.
(f) The location or existence of historic, archaeological, scenic or other critical resources and culturally significant features on the parcel.
(g) A Class B high intensity soil survey for the portion of the parcel proposed to be developed.
(h) The proposed method of sewage disposal, including the results of all site evaluations to determine the suitability for on-site sewage disposal showing both test pits that are acceptable and those that are not.
(i) The location of any areas with known or suspected groundwater quality or quantity problems that may limit the ability to establish on-site wells.
(j) Existing buildings, structures, or other improvements on the lot and on adjacent lots within two hundred fifty (250) feet of the parcel (if none, so state).
(k) Existing restrictions or easements on the lot (if none, so state).
(l) The location and size of existing utilities or improvements servicing the lot (if none, so state).

8.3.1.2.5. Ten (10) copies of a site analysis plan at the same scale as the inventory plan (see Section 8.3.1.2.4 above) highlighting the opportunities and constraints of the parcel. This plan should enable the Planning Board to determine: which portions of the parcel are unsuitable for development or use (Primary Conservation Areas); which portions of the lot are unsuitable for on-site sewage disposal; which areas of the lot have development limitations or conservation value (e.g. soil constraints, groundwater issues, wildlife habitat, fisheries, scenic vistas, drainage concerns, historic or archaeological resources) that should be addressed in the development plan; which areas may be subject to off-site conflicts or concerns (e.g., noise, lighting, traffic, existing dwellings on adjacent lots); and which areas are most suited to the proposed use.

8.3.1.2.6. Ten (10) copies of a narrative describing the existing conditions of the parcel, the proposed use and the constraints or opportunities created by the site. This submission should include any traffic studies, utility studies, market studies or other preliminary work that will assist the Planning Board in understanding the site and the proposed use.

8.3.1.3. Conceptual Subdivision Plan

The conceptual subdivision plan must be based on the site inventory and analysis and reflect the suitability of the parcel for development and conservation identified in the analysis. The plan shall show the general layout of the subdivision, including the locations of dwelling sites or building envelopes, lot lines, streets, protected or common open space, and other common facilities. The plan shall be drawn at the same scale as the site analysis plan. The plan shall be developed based on the following Four Step Design Process and the steps shall be documented: Applicants shall submit a plan that is the end result of this process, but may be asked by the Planning Board to submit four (4) separate sketch maps indicating the findings resulting from each step of the design process. In deciding whether it is necessary to submit separate sketch maps for each of the steps listed above, the Planning Board shall consider the size of the parcel and whether the site includes a significant amount of environmentally sensitive areas.

The following four (4) step design process is intended to allow the developer the full potential of the legally allowable number of lots, while at the same time preserving valuable natural resources and open space.

8.3.1.3.1. Step 1 of the 4 Step Design Process: Delineation of Natural Resource or Conservation Areas

A. Identify the portions of the parcel that have significant development restrictions due to natural constraints (Primary Conservation Areas) or that have significant natural or cultural...
resource value (Secondary Conservation Areas) based on the site analysis.

B. If the applicant is proposing a Flexible Lot Size subdivision, calculate the area of required open space in accordance with the provisions of Section 9.4.3 of this ordinance.

C. If the applicant is proposing a Flexible Lot Size subdivision, designate the proposed location of open space(s) on the conceptual subdivision plan based on Section 9.4.3. This should be done on the basis of practical considerations related to the tract’s configuration, its context to resource areas on neighboring properties, the priorities listed in Section 9.4.3 for open space areas, and the applicant’s subdivision objectives.

D. If the applicant is not proposing a Flexible Lot Size subdivision, designate areas that are not appropriate for development as dwelling sites and adjacent areas, roads, and other structural improvements.

8.3.1.3.2. Step 2 of the 4 Step Design Process: Location of Dwelling Sites

Potential dwelling sites shall be tentatively located using the results of Step 1 as a base, as well as other relevant data from the Site Analysis, such as topography and soils. Dwelling sites should generally be located not closer than one hundred (100) feet from Primary Conservation Areas and fifty (50) feet from Secondary Conservation Areas, taking into consideration the potential negative impacts of residential development on such areas, as well as the potential positive benefits of such locations to provide attractive views and visual settings for residences. In addition, the dwelling sites should be located taking into account the location of existing dwellings on lots adjacent to the subdivision, the character of the area between the existing dwellings and the potential dwelling sites, and the potential for negative impacts on existing dwellings. The location of the dwelling sites in a Flexible Lot Size Subdivision should avoid concentrating units in the portions of the site immediately adjacent to existing dwellings outside of the subdivision.

8.3.1.3.3. Step 3 of the 4 Step Design Process: Alignment of Streets

Upon designating the dwelling sites, a street plan shall be designed to provide vehicular access to each dwelling and bearing a logical relationship to topographic conditions. Impacts of the street plan on natural resources or proposed conservation lands shall be minimized, particularly with respect to crossing environmentally sensitive areas such as wetlands and traversing slopes exceeding twenty percent (20%). Street connections shall generally be encouraged to minimize the number of new cul-de-sacs and to facilitate access to and from dwellings in different parts of the tract (and adjoining parcels) while minimizing the potential for cut-thru traffic and speeding.

8.3.1.3.4. Step 4 of the 4 Step Design Process: Drawing in the Lot Lines

Upon completion of the preceding three (3) steps, lot lines shall be drawn as required to delineate the boundaries of individual lots. Wherever possible, lot lines shall be perpendicular to the street.
8.3.2. Final Subdivision Plan Application

The final subdivision plan shall consist of one (1) or more maps to a scale of not more than fifty (50) feet per inch. The following information shall either be shown on the final subdivision plan or accompany the application for the final subdivision plan. Information indicated with an asterisk may be submitted as part of an updated site inventory and analysis:

<table>
<thead>
<tr>
<th>Section</th>
<th>Submission Requirement</th>
<th>Lot Line Amendment</th>
<th>Minor Sub.</th>
<th>Major Sub.</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.3.2.1.</td>
<td>Proposed name of subdivision plan</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>8.3.2.2.</td>
<td>The Tax Assessor's map and lot numbers for the property proposed to be subdivided.</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>8.3.2.3.</td>
<td>Verification of right, title, or interest in the property</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>8.3.2.4.</td>
<td>A standard boundary survey as specified by the Board of Licensure for Professional Land Surveyors.</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>8.3.2.5.</td>
<td>The topography of the site shall be shown by two (2) foot contour intervals in relation to mean sea level. The Planning Board may allow larger contour intervals or require more detailed contour information if it finds that the information is necessary to complete review of the application. Existing buildings, springs, water courses, wetlands, vegetative cover, rock outcroppings, and other essential existing physical features shall also be located.</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>8.3.2.6.</td>
<td>A copy of all existing and proposed covenants, deed restrictions, easements, rights-of-way, or other encumbrances affecting the property, delineated wherever possible.</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>8.3.2.7.</td>
<td>The number of acres within the proposed subdivision, the square footage of proposed lots.</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>8.3.2.8.</td>
<td>The date the plan was prepared, magnetic north arrow, graphic map scale, names and addresses of the record owner, applicant, engineer, and individual or company who prepared the plan, including appropriate seals.</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>8.3.2.9.</td>
<td>Names of record owners of abutting properties, including any properties directly across rights-of-way or traveled ways. For purposes of abutter notifications, a separate list of abutters with addresses should be submitted.</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>8.3.2.10.</td>
<td>The location of any zoning boundaries affecting the property and a description of the proposed uses to be located on the site, including quantity and type of residential units.</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>8.3.2.11.</td>
<td>A copy of the Cumberland County Medium Intensity Soil Survey.</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>8.3.2.12.</td>
<td>Proposed method of sewage disposal, including site evaluations indicating suitability of the soil for sewage disposal on each lot. Test pit analyses and completed sewage disposal design prepared by a licensed site evaluator, shall be provided. Each test pit or boring must be staked and identified on the subdivision plan. If a variance is required according to the Maine State Plumbing Code, the Planning Board may request a second evaluation to be done by the State Division of Health Engineering or by a professional designated by the Planning Board. The proposed subdivision plan shall also indicate the locations where wells cannot be located because of sewage disposal setbacks.</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>8.3.2.13.</td>
<td>Proposed type of water supply system(s) and documentation by a Certified Geologist or Registered Engineer that the groundwater system will support adequate supply and quality.</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.3.2.14.</td>
<td>Proposed method for handling solid waste disposal</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>8.3.2.15.</td>
<td>Documentation of adequate water quantity to serve the subdivision based on information from neighboring wells, obtained from property owners and well drillers.</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.3.2.16.</td>
<td>The location, proposed names, widths, grades, road profiles, radii, length of curves, and central angle of curves for all existing and proposed road rights-of-way, pavement and/or gravel lines, and entrances to a public road. Copies of Maine Department of Transportation (MDOT) approval for entrances onto existing State highways shall also be required.</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>8.3.2.17.</td>
<td>An estimate of the amount, type, and impact of vehicular traffic to be generated on a daily basis and at peak hours based on the assumption of two (2) cars per residential dwelling unit or a figure generated from the most recent edition of a recognized trip generation manual.</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.3.2.18.</td>
<td>The location of existing or proposed utilities on or adjacent to the subdivision.</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>8.3.2.19*.</td>
<td>The boundaries of any flood hazard areas and the one hundred (100) year flood elevation as defined by the Federal Emergency Management Agency (FEMA).</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>8.3.2.20.</td>
<td>A surface drainage plan that shows the location and size of ditches, culverts, drainage ways, easements, and other improvements on or adjacent to the proposed subdivision and the direction of flow.</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>8.3.2.21.</td>
<td>Description of any problems with drainage, soils, or topography, or a representation that, in the opinion of the applicant, none exist.</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>
8.3.2.22. A hydrogeologic assessment prepared by a Certified Geologist experienced in hydrogeology if:

8.3.2.22.1. Documented problems exist with the quality or quantity of water in wells in the vicinity of the development; or

8.3.2.22.2. Part of the subdivision is located in the area recommended as having lot sizes of 4.2 acres on Map 3 "Recommended minimum lot sizes based on Groundwater Protection" of the 1987 Comprehensive Plan and the applicant proposes lot sizes of less than 4.2 acres; or

_Citizen’s Note:_ The 4.2 acre restriction is not automatically part of the Subdivision Ordinance.

8.3.2.22.3. The assessment shall include:

8.3.2.22.3.1. The depth of the water table at representative points throughout the proposed development

8.3.2.22.3.2. Data on existing groundwater quality and quantity, either from test wells in the subdivision, from existing wells on neighboring property, or from data gathered during development of the 1993 Comprehensive Plan

_Citizen’s Note:_ This information is on file in the Code Enforcement Office

8.3.2.22.3.3. Existing and post-construction drainage conditions throughout the proposed subdivision

8.3.2.22.3.4. A map showing the location of all existing and proposed subsurface wastewater disposal systems and all existing and proposed drinking wells within the subdivision and all existing systems within three hundred (300) feet of its boundary

8.3.2.22.3.5. Assessment of the potential for saltwater intrusion when the proposed subdivision is located adjacent to areas reporting high chloride content of drilled wells as shown on Map 2 "Future Land Use Map" of the 1993 Comprehensive Plan or where there is evidence for potential saltwater intrusion

8.3.2.22.3.6. A map showing the location of all existing and proposed subsurface wastewater disposal systems and all existing and proposed drinking wells within the subdivision and all existing systems within three hundred (300) feet of its boundary
<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>X</th>
<th>X</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.3.2.23*</td>
<td>The location or existence of historic, archeological, scenic, or other critical resources known to exist in the proposed subdivision. For any proposed land use activity involving structural development or soil disturbance on sites listed on the National Register of Historic Places, the applicant shall provide evidence that they have submitted their proposal to the Maine Historic Preservation Commission for review and comment. The Planning Board may require a written statement from the Maine Historic Preservation Commission indicating the proposed development will not adversely impact archeological or historic resources or recommending how the proposed development might be modified to minimize any adverse impact on archeological or historic resources.</td>
<td></td>
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</tr>
<tr>
<td>8.3.2.24</td>
<td>Written statement of how proposed subdivision plan fits in with the character of the Town as set forth in the most recently adopted edition of the Town’s Comprehensive Plan.</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>8.3.2.25*</td>
<td>The location of significant wildlife habitat or rare and irreplaceable natural areas located in or near the proposed subdivision as identified by the Department of Inland Fisheries and Wildlife (IFW) and the Natural Heritage Data Base in the Department of Economic and Community Development (DECD) or in the 1987 or 1993 Comprehensive Plans, and shellfish habitats and other marine environments which may be affected by the development.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.3.2.26*</td>
<td>The location, names, and dimensions of existing and proposed public or private parks and other open spaces on or adjacent to the subdivision and a description of any proposed improvements and their management.</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>8.3.2.27</td>
<td>If parks or other open spaces are proposed to be deeded to the Town, a homeowners/landowners association, land trust, or other non-profit organization, the location of the open space shall be shown on the subdivision plan. Written offers of cession to the organization and copies of agreements or documents showing the manner in which open spaces will be retained by the applicant or lot owners shall be submitted.</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>8.3.2.28</td>
<td>If a homeowners/landowners association is to be formed, documentation of the standards contained in Paragraph 9.16 of this Ordinance.</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>8.3.2.29</td>
<td>A soil erosion and sedimentation control plan in conformance with Section 9.7 of this Ordinance.</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>8.3.2.30</td>
<td>Location and dimensions of all fencing and screening.</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>8.3.2.31</td>
<td>Construction cost estimates for improvements to be completed by the applicant prior to the sale of lots and an estimate of the time period required for completion of the development.</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
<td></td>
<td></td>
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<tr>
<td>8.3.2.32.</td>
<td>Subdivisions proposed for offshore islands must provide maps indicating mainland support facilities, including private landings, moorings, and a minimum of two (2) parking spaces for each lot. Also required is documentation of title, right, or interest in mainland property for support facilities. If mainland support facilities are located in another municipality, the applicant must provide a written statement of approval from that municipality.</td>
<td></td>
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<tr>
<td>8.3.2.33.</td>
<td>If the subdivision plan involves substantial improvements, such as construction of utilities, the Planning Board may require evidence of financial capacity to complete the proposed improvements.</td>
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</tr>
</tbody>
</table>
| 8.3.2.34. | The following approvals, if applicable, must be obtained in writing:  
  8.3.2.34.1. A Wastewater Discharge License if required from the Maine Department of Environmental Protection (DEP);  
  8.3.2.34.2. Approval from the Maine Department of Human Services (DHS) if an engineered sewage disposal system is to be utilized or if the applicant proposes to provide a central water supply system; or  
  8.3.2.34.3. Approval from the Local Plumbing Inspector indicating that the wastewater disposal permits can be obtained. |
| 8.3.2.35. | At the option of the applicant or the Planning Board, any other information that may be necessary for the full and proper consideration of the subdivision plan. |
| 8.3.2.36. | 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 and provide a copy of the original signed plan being revised or amended. |

*Note: When the Planning Board requires the applicant to seek comments from a group or agency outside of Town Officials, including but not limited to the Harpswell Historical Society and Maine Department of Inland Fisheries and Wildlife, the applicant shall provide written documentation of the request for comments. The applicant shall include in the written request reference to this Section of the Ordinance which specifies that if the applicant has not received written comments from the specified group or agency within forty-five (45) days of receipt of the request, the Planning Board may assume that the group or agency has no concerns with the proposed development.

### 8.3.3. Fee for Independent Consulting Services

In addition to the application fee, every application for a subdivision shall be accompanied by the payment of an independent consulting fee assessed on a per lot or per dwelling unit basis, whichever amount is greater, in such amount as may be established by the Board of Selectmen from time to time. The payment shall be deposited in an individual trust account which is separate and distinct from all other Planning Board and Town accounts.
The Planning Board may use the funds in the individual trust account to hire independent consulting services to review the application. The applicant shall provide additional funds, as necessary, to cover the cost of independent consulting services.

Any balance in the account remaining after a decision on the application by the Planning Board, whether approved or denied, shall be refunded to the applicant after all payment of all consulting services related to review of the subdivision.

8.4. Notification

When an application for either a preliminary conceptual plan or a final subdivision plan is received, the Municipal Office, at the applicant's expense, shall give a dated receipt to the applicant and shall notify, by first class mail, all record owners of abutting properties and the clerk and reviewing authority of any municipalities that abut or include any portion of the subdivision, specifying the location of the proposed subdivision and including a general description of the project. Failure of any property owner to receive the notice sent as required under this subsection shall not necessitate another public meeting or invalidate any action taken by the Planning Board.

8.5. Determination of Complete Application

Within thirty (30) days of receipt of a subdivision plan and fee, the Planning Board shall notify the applicant in writing whether or not the application is complete, and if incomplete, of any additional submissions which are required.

A fee schedule for subdivision applications shall be established and revised from time to time by the Selectmen after notice, public hearing, and recommendation of the Planning Board in conformance with 30-A M.R.S.A. § 4355, as may be amended from time to time. Application fees shall be payable by check to the Town. Application fees are to be paid at the time of submission of a preliminary conceptual plan or at the time of submission of a final plan for those applications that file a preliminary and final plan simultaneously.

Upon determination that a complete application has been submitted, the Planning Board shall issue a dated receipt to the applicant. If the Planning Board determines the application is incomplete, the application will be heard at the Planning Board meeting following submission of a complete application.

The Planning Board may notify a number of appropriate departments, committees, or individuals of the application for the proposed subdivision, including but not limited to the Road Commissioner, Harpswell SAD 75 representatives, Conservation Commission, Marine Resources Committee, local Fire Chief, and other affected parties as appropriate. The Planning Board may request that these officials and the Code Enforcement Office comment upon consistency with local codes and the adequacy of departments to service the proposed subdivision.

8.6. Site Visits

After submission of a complete application for a preliminary conceptual plan, the Planning Board shall conduct a site visit to provide members the opportunity to view the site. The site visit shall
be scheduled prior to the meeting at which the application is considered so that all parties, including the applicant or representative of the applicant, owners of abutting properties and interested members of the public, have reasonable opportunity to participate as a matter of due process as a public proceeding under Maine's Right to Know Law, 1 M.R.S.A. §401 et seq., as may be amended from time to time. The Planning Board may hold a second site visit when the application for a final plan is received following the same procedures.

8.7. Public Hearing

The Planning Board shall hold a public hearing on all final subdivision applications within thirty (30) days of determination of a complete application. The Planning Board shall publish notice of the date, time, and place of the meeting in a local newspaper at least two (2) times. The date of the first publication must be at least seven (7) days prior to the public hearing. In addition, the Planning Board, at the applicant's expense, shall notify by first class mail, all record owners of abutting property. Failure of any property owner to receive the notice sent under as required this subsection shall not necessitate another public meeting or invalidate any action taken by the Planning Board. To be considered by the Planning Board, all comments must be received in writing prior to this public hearing, or made verbally at the public hearing.

8.8. Planning Board Review

The Planning Board shall discuss the final plan application at a regularly scheduled meeting within forty-five (45) days of receipt of a complete application.

8.8.1. The applicant, or a duly authorized representative, shall attend the meeting of the Planning Board to discuss the subdivision plan. In the case of an authorized representative, the Planning Board will require a letter showing that the representative is in fact authorized to represent the applicant.

8.8.2. Before the Planning Board grants approval of the subdivision, the Planning Board shall find that the applicant has met all standards of 30-A M.R.S.A., § 4404, as it may be amended from time to time, and Section 9 of this Ordinance in accordance with Section 8.9 below.

8.8.3. Before the Planning Board grants approval of the subdivision, the applicant shall meet the performance guarantee requirements contained in Section 10 of this Ordinance.

8.9. Planning Board Approval or Denial of the Subdivision

The Planning Board shall, within thirty (30) days of a public hearing, and/or within sixty (60) days of determining it has received a complete application, or within any other time limit that is otherwise mutually agreed to, issue an order:

8.9.1. Denying approval of the proposed subdivision, or

8.9.2. Granting approval of the proposed subdivision, or

8.9.3. Granting approval upon any terms and conditions that it considers advisable to:
8.9.3.1. Satisfy the criteria listed in 30-A M.R.S.A. § 4404, as may be amended from time to time,

8.9.3.2. Satisfy the criteria and regulations adopted under the provisions of this Ordinance, and

8.9.3.3. Protect and preserve the public's health, safety, and general welfare.

The reasons for any denial, conditions of approval, or other stipulations shall be stated in the written findings of the Planning Board. If the Planning Board grants a waiver of any submission requirement, it shall state in the written findings the character and extent of the waiver, specify that the waiver has been granted in accordance with Section 7 of this Ordinance, and will not inhibit the Planning Board's ability to evaluate whether the application meets the standards of 30-A M.R.S.A. § 4401 et seq., as may be amended from time to time, and Section 9 of this Ordinance.

The action of the Planning Board shall be recorded on the subdivision plan with the date of action over the signatures of the members of the Planning Board.

When the subdivision is approved, the applicant shall pay the cost of reproducing the required copies of the approved plan for Town records.

8.10. Recording of the Approved Subdivision Plan

The applicant shall, within ninety (90) days of Planning Board approval, submit the signed subdivision plan to the Cumberland County Registry of Deeds and report the book and page numbers to the CEO within one hundred and twenty (120) days so the references can be recorded on the Town's copies of the plan. The plan shall either contain all the conditions of approval or the applicant shall record a separate document that contains all the conditions of approval under the same terms and provisions as those applying the plan. If the applicant fails to record the signed plan and report the book and page number to the CEO within the required time frame, approval shall be null and void and the CEO shall note that fact on all Town records.

8.11. Plan Revisions after Approval

No changes may be made in any subdivision plan after approval has been given by the Planning Board unless the plan is first resubmitted and the Planning Board approves any modifications in conformance with 30-A M.R.S.A. § 4404 and Section 12 of this Ordinance, as may be amended from time to time. This provision does not prohibit minor field changes during construction, made with the approval of the CEO or his or her delegate. In the event that an amended plan is recorded without complying with this requirement, it shall be considered null and void and the Planning Board shall record at the Registry of Deeds and with the Town Clerk an affidavit stating the facts and setting forth the legal conclusion that the plan is null and void.

8.12. Phasing of Development

The Planning Board may permit the subdivision plan to be divided into two (2) or more separate and distinct phases subject to any conditions it deems necessary to insure the orderly development of the plan. This may be accomplished by limiting approval to those lots or areas abutting that phase of the proposed subdivision road which is covered by a performance
guarantee. When development is phased, road and any other construction shall commence from an existing public way. Approval of lots or other development in subsequent phases shall be given only upon satisfactory completion of all requirements pertaining to previous phases.

If the subdivision plan requires the Town to expand, add to, or purchase new facilities, the applicant shall provide an alternative development plan, including but not limited to phasing, construction delays to coincide with public funding of the required improvements, and/or private funding options.

8.13. Lot Line Amendments

Any proposal to revise, relocate or otherwise amend the lot line (or lines) of a lot (or lots) shown on a subdivision plan that has been previously approved by the Planning Board that, if approved by the Planning Board, would result in the same or smaller number of lots as existing prior to the proposed lot line amendment must still be reviewed and approved by the Planning Board, but the applicant may submit an abbreviated application as set forth in Section 8.3.2 regarding submission requirements for a “Lot Line Amendment.”

SECTION 9. APPROVAL STANDARDS

When reviewing any subdivision plan, the Planning Board shall determine that the proposed subdivision in conjunction with any other existing or approved development meets the review criteria in 30-A M.R.S.A § 4404 and this Section, as may be amended from time to time.

Burden of Proof; Findings of Fact

In all instances, the burden of proof is upon the person proposing the subdivision. In issuing its decision, the Planning Board shall make findings of fact establishing that the proposed subdivision does or does not meet the criteria described in this Section.

9.1. Conformance

All proposed developments must be in conformity with all pertinent local, State, and Federal ordinances, laws, and regulations.

9.2. Municipal Services

The proposed development shall not have an unreasonable adverse impact on municipal services including the municipal road systems, fire department, solid waste program, schools, and other municipal services and facilities.

9.3. Preservation of the Landscape

The landscape must be preserved in its natural state insofar as practicable by minimizing tree removal, disturbance of soil, and retaining existing vegetation during construction. The Planning Board may allow the removal of trees to create open meadows and scenic vistas which are part of the overall subdivision.

9.4. Lots

9.4.1. Two-Acre Lot Size Subdivisions – The minimum lot size for lots in a Two-Acre Lot Size subdivision shall be eighty thousand (80,000) square feet per dwelling unit. The minimum
road frontage per lot for subdivisions shall be one hundred fifty (150) feet, and the minimum shore frontage per lot for subdivisions shall be one hundred fifty (150) feet.

9.4.2. Flag lots and other odd shape lots in which narrow strips are joined to other parcels in order to meet minimum lot size requirements are prohibited in Two-Acre Lot Size subdivisions.

9.4.3. Flexible Lot Size Subdivisions — The applicant may propose, and the Planning Board may approve, a subdivision design in which the lots are smaller and have less road frontage than required for a Two-Acre Lot Size subdivision and in which at least half of the parcel is preserved as open space in accordance with the provisions of this Section.

9.4.3.1 Purpose — The purposes of the Flexible Lot Size subdivision provisions are to: 1) provide the property owner or subdivider with flexibility in the design and layout of a subdivision recognizing the development constraints for Two-Acre Lot Size subdivisions in many areas of the community, 2) allow for the creation of developments with a stronger neighborhood character, and 3) provide for the permanent protection of protected and common open space that is consistent with the Town’s long range goals for preserving the community’s natural, cultural and scenic resources.

9.4.3.2 Maximum Number of Lots — The intention in allowing Flexible Lot Size subdivisions is that a property owner or subdivider can create approximately the same number of lots that they could in a Two-Acre Lot Size subdivision. The maximum number of lots allowed in a Flexible Lot Size subdivision shall be calculated based on the following formula:

\[
\text{Maximum Number of Lots/Units} = \frac{\text{Net Useable Area of the Parcel}}{80,000 \text{ Square Feet per Unit/Lot}}
\]

If the applicant proposes to include workforce housing as part of the subdivision, the maximum number of lots allowed shall be adjusted according to the density bonuses for workforce housing set out in Section 11.18 of the Basic Land Use Ordinance.

9.4.3.3 Minimum Size of Lots -- To provide property owners and subdividers with flexibility in the design of a Flexible Lot Size subdivision, there is no minimum lot size requirement subject to the following limitations:
9.4.3.3.1 – Lots that have their primary road frontage on an existing public road must have a minimum lot area of forty thousand (40,000) square feet.

9.4.3.3.2 – For one-unit residential lots with less than twenty thousand (20,000) square feet of lot area, the applicant must demonstrate that the lot will meet the requirements of the State Minimum Lot Size law.

9.4.3.3.3 – For lots that will have more than one (1) dwelling unit or a nonresidential use, the applicant must demonstrate that the lot will meet the requirements of the State Minimum Lot Size law.

9.4.3.3.4 – No lot that is located entirely within the Shoreland Zone shall have less than required minimum lot area required by the Shoreland Zoning Ordinance. Lots that are located partially within the Shoreland Zone may be smaller than required by the Shoreland Zoning Ordinance if the principal building and the on-site sewage disposal system are located outside of the Shoreland Zone.

9.4.3.4 Minimum Road Frontage – To encourage the creation of lots that do not front on existing public roads, lots in a Flexible Lot Size subdivision shall conform to the following minimum frontage requirements:

- Lots that front on an existing public road: 150 feet per unit
- Lots that front on an existing private road: 75 feet per unit
- Lots that front on a new road within the subdivision: 40 feet per unit

9.4.3.5 Lot Shape – To allow flexibility in the design of the subdivision in accordance with the process laid out in Section 8.3.1.3, there are no limitations on the shape of lots in a Flexible Lot Size subdivision as long as each lot contains a suitable development site of an appropriate size to accommodate the anticipated development. Flag lots and other irregularly-shaped lots are allowed as long as they are consistent with the overall utilization of the parcel based on the site inventory and analysis and conceptual subdivision plan.

9.4.3.6 Sewage Disposal – Sewage disposal may be provided by individual, shared, or common subsurface sewage disposal facilities. The components of the systems may be located on the lot which they serve or may be located off the lot including within the protected or common open space in accordance with Section 11.4 of the Basic Land Use Ordinance.

9.4.3.7 Perimeter Buffer – Whenever any portion of a lot in the Flexible Lot Size subdivision is located within twenty (20) feet of a parcel that is not part of the Flexible Lot Size subdivision, that portion of the lot shall be maintained as a vegetated buffer. No principal or accessory buildings, structural improvements (other than fences as part of an approved buffer), lawns, gardens, storage of personal items, or similar activities shall occur within this area. As part of the subdivision plan, the applicant shall provide details for how this buffer will be treated and maintained. If the area is currently wooded or heavily vegetated, this should be retained if possible. Where this area is not currently wooded, the applicant shall provide for the establishment of a vegetated buffer sufficient to provide
visual relief to the abutting property. The Planning Board may waive or reduce this requirement to allow for utilities to cross the buffer or to retain scenic views.

9.4.3.8 Minimum Protected or Common Open Space – The concept of a Flexible Lot Size subdivision is to allow for smaller lots in return for a substantial portion of the parcel being set aside as open space. The minimum amount of land included in protected or common open space shall be determined by the following formula:

One hundred percent (100%) of the area of the parcel that is unsuitable for development (see Section 9.5)  
Plus  
Fifty percent (50%) of the area of the remaining acreage of the parcel (total area of the parcel minus the area unsuitable for development)

9.4.3.9 Location of the Protected or Common Open Space – The protected or common open space shall be located in accordance with the site inventory and analysis. In determining which land should be included in the open space, the applicant shall be guided by the following priorities:

9.4.3.9.1 First Priority – Primary Conservation Areas – Most or all of the identified Primary Conservation Areas should be included in the protected or common open space.

9.4.3.9.2 Second Priority – Secondary Conservation Areas – After including the Primary Conservation Areas in the open space, the following Secondary Conservation Areas should be considered for inclusion in the protected or common open space in the following order:

(a) Land that has been used for traditional access to the water or public beaches.
(b) Land that will be used to provide new or expanded access to the water.
(c) Land within one hundred (100) feet of tidal waters or streams that drain to tidal waters.
(d) Land that is within two hundred fifty (250) feet of a significant vernal pool.
(e) Land that is adjacent to land that is owned by the Town, a land trust, formally organized conservation organization, or state agency or that is otherwise permanently protected as open space.
(f) Land which will allow for the continuation or connection of trails whether or not such a facility is proposed as part of the subdivision.
(g) Land that maintains the integrity of blocks of unfragmented habitat or that protects identified habitats and/or travel areas between habitat blocks.
(h) Land containing identified historic or archeological sites or significant cultural features such as stone walls and specimen trees.
(i) Land that is in current or planned agricultural or managed forestry use.
(j) Land that is in current or planned commercial fisheries use.
(k) Land that protects scenic views visible from public property or the views of abutting property owners or of dwellings to be built within the subdivision.
(l) Land that is located within a focus area identified in the Town’s adopted Open Space Plan.
9.4.3.10 Use of Protected or Common Open Space

For purposes of this section, protected or common open space areas must comply with the following:

a. The common open spaces must be dedicated to the recreational amenity and environmental enhancement of the development, must protect natural resources, and must be recorded as such. For the purpose of these provisions, common open space means an area that:

1) is not encumbered in any way by a principal structure;
2) is not devoted to use as a roadway, road right-of-way, parking lot, sidewalk, or similar structural improvements;
3) is left in its natural or undisturbed state, except for low-intensity recreational facilities including the cutting of trails for non-motorized recreation, unless the land will be managed by an approved sustainable forestry plan signed by a Licensed Maine Forester, or for community gardens, or for continuance of currently existing agricultural use, or for components of subsurface sewage disposal or water supply systems;
4) is capable of being used and enjoyed for the purpose of informal and unstructured recreation and relaxation; and
5) is legally and practicably accessible to residents of lots in the development out of which the open space is taken unless the open space will be owned by a private party for agricultural or other natural resource use or such access will compromise the natural resource value of the open space.

b. The common open space shall be controlled by one (1) or more of the following methods:

1) common ownership by the owners of the units within the development with covenants or deed restrictions approved by the Planning Board establishing restrictions on the use of the open space and provisions for its permanent management; and/or
2) transfer, with permanent restrictions, to a land trust or other recognized conservation organization; and/or
3) ownership by a private party for agricultural or other natural resource use provided that permanent restrictions are in place to provide for its continued use for this purpose.

c. Any development proposed under this section shall specify the ownership, use, management, and entity responsible for maintenance of all common areas and facilities. When the open space will be protected through covenants or deed restrictions, those provisions must provide that the covenants or deed restrictions are enforceable by the owner of any lot in the subdivision, by the owner of any lot outside of the subdivision that abuts the common open space, or by the Town of Harpswell. The covenants, deed
restrictions and/or conservation easements shall provide for the monitoring of compliance with the restrictions at least once every two (2) years. A report of the monitoring setting out the findings of the monitoring and any needed corrective action shall be submitted to the Conservation Commission. The Conservation Commission shall review the monitoring report and shall have the opportunity to conduct an on-site visit if necessary to verify the findings of the monitoring report. If the homeowners association or easement holder fails to conduct the required monitoring, the Conservation Commission may carry out the monitoring. If the Town takes action to monitor or enforce the covenants, deed restrictions, or conservation easements, the cost of such monitoring and/or enforcement shall be recoverable by the Town from the homeowners association or easement holder. The Planning Board shall approve the arrangements for the ownership, control, use and maintenance of the common open space in accordance with the standards of subsections (a) and (b) above as part of the approval of a final subdivision plan. No changes in the use or management of common open space shall be made without Planning Board approval and a note shall be provided on the approved subdivision plan to this effect.

d. Any common open space or facility not retained by a private owner shall be maintained by a developer or homeowners’ association unless and until it is transferred in its entirety to a recognized conservation organization and until the transfer actually is completed. The formation and incorporation by the developer of a homeowners’ association, if one is proposed, shall be accomplished prior to final subdivision approval.

9.5. Land Not Suitable for Development

The following land shall not be included in the calculation of the area of a lot for the purposes of meeting minimum lot size or other density or dimensional requirements:

9.5.1. Land below the maximum high water line of a great pond, stream, or tributary stream, stream, or pond;

9.5.2. Land below the HAT of a coastal wetland,

9.5.3. Land below the upland edge of a freshwater wetland with a contiguous area of more than twenty thousand (20,000) square feet,

9.5.4. Land which is part of a road, or a transportation right-of-way, or easement serving more than two (2) lots, except rights-of-way or easements used exclusively for pedestrian access, and

9.5.5. Land created by the filling or draining of a great pond, stream, tributary stream, or coastal or freshwater wetland.

Citizen’s Note: The filling or draining of a water body, tributary stream, or wetland will usually require State and Federal approval.

9.6. Required Improvements

The following improvements are required for all subdivisions:

9.6.1. Lot Markers
9.6.1.1. Permanent markers must be set at all road intersections and points of curvature, points of tangency, and intersections.

9.6.1.2. Permanent markers must be set at all corners and angle points of the subdivision boundaries.

9.6.2. Water Supply

9.6.2.1. The proposed subdivision plan must have sufficient water available for the reasonably foreseeable needs of the development.

9.6.2.2. If a central water supply system is provided by the applicant, the location and protection of the source, and design, construction, and operation of the system must conform to the standards of the Maine Rules Relating to Drinking Water (C.M.R. 10-144 231). The Code Enforcement Office shall be notified by the Planning Board of the location of a proposed community water supply for reference in future amendment of the Comprehensive Plan.

9.6.2.3. Lot design shall permit the placement of wells and subsurface wastewater disposal areas, and reserve sites for subsurface wastewater disposal areas in compliance with the Maine Subsurface Wastewater Disposal Rules.

9.6.2.4. Individual wells shall be sited and constructed to prevent infiltration of surface water, and contamination from subsurface wastewater disposal systems and other sources of potential contamination.

9.6.2.5. Water supplies shall meet the primary Drinking Water Standards contained in the Maine Rules Relating to Drinking Water. If existing water quality contains contaminants in excess of the secondary drinking water standards in the Maine Rules Relating to Drinking Water, that fact shall be disclosed in a note on the Plan to be recorded in the Cumberland County Registry of Deeds.

9.6.3. Sewage Disposal

9.6.3.1. The subsurface disposal must be in full compliance with the requirements of the State of Maine Subsurface Wastewater Disposal Rules and to minimize adverse impacts on ground water quality. In addition, the Planning Board may request the applicant to pay for a second assessment of the site if the site has been identified as being marginally acceptable according to the Maine State Plumbing Code.

9.6.3.2. Any septic system must be placed at least one hundred (100) feet from any existing well whether the well is on the property or on contiguous property.

9.6.3.3. If common or cluster septic systems are used, a second site suitable for subsurface disposal must be available.

9.6.4. Fire Protection

Provisions must be made for adequate emergency vehicle access to the subdivision and for water supply for fire protection.
9.7. Erosion and Sedimentation Control

9.7.1. The proposed subdivision plan will not cause soil erosion or a reduction in the land's capacity to hold waters such that a dangerous or unhealthy condition results.

9.7.2. The following measures relating to soil conservation and erosion and sediment control shall be included where applicable as part of all projects submitted for review and approval under this Ordinance:

9.7.2.1. The procedures outlined in the erosion and sedimentation control plan, submitted by the applicant, shall be implemented during the site preparation, construction, and clean-up stages.

9.7.2.2. Erosion of soil and sedimentation of watercourses and water bodies shall be controlled by employing the following best management techniques:

9.7.2.2.1. Stripping of vegetation, soil removal, and regrading or other development must be done in such a way to control erosion;

9.7.2.2.2. Development must preserve outstanding natural features and ensure conformity with topography so as to create the least erosion;

9.7.2.2.3. The rate of surface runoff from the proposed development shall not be increased;

9.7.2.2.4. Whenever possible, natural vegetation shall be retained;

9.7.2.2.5. Disturbed soils must be stabilized as quickly as possible;

9.7.2.2.6. Permanent vegetation and mechanical erosion control measures, in accordance with the standards of the most recent edition of Environmental Quality Handbook as published by the Maine Soil and Water Conservation Commission, must be installed as soon as possible; and

9.7.2.2.7. Maintenance of drainage facilities or watercourses originating and completely on private property is the responsibility of the owner to the point of discharge at the property line.

9.7.3. 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.

9.8. Utilities

9.8.1. Any utility installations remaining above ground must be located, where possible, in existing public ways and existing service corridors, and so as to avoid crossing open areas and scenic views as identified in the Comprehensive Plan.

9.8.2. The size and proposed location of utilities must be shown on the plans.
9.9. Construction in Flood Hazard Areas
When any part of a development is located in a Flood Hazard Area as identified by the Federal Emergency Management Agency, the plan must be in conformance with the Harpswell Floodplain Management Ordinance.

9.10. Impact on Wetlands
Subdivision plans shall be designed to minimize impact on wetlands.

Septic systems and structures must be set back at least two hundred fifty (250) feet from the upland edge of moderate or high value wetlands, at least seventy-five (75) feet from a water body, tributary stream, or the upland edge of a coastal or freshwater wetland; and at least twenty-five (25) feet from the upland edge of a forested wetland.

If the Local Plumbing Inspector, upon review of written evidence submitted by a soil scientist licensed to practice in Maine, determines that the only practical alternative for a specific subsurface wastewater disposal system is within the seventy-five (75) foot setback of the upland edge of a coastal or freshwater wetland, or within the twenty-five (25) foot setback from the upland edge of a forested wetland, the Planning Board may waive the setback requirement for that specific subsurface wastewater disposal system, and set appropriate conditions on the system as recommended by the Local Plumbing Inspector, provided that the waiver does not have the effect of nullifying the purpose of this Ordinance or violating the State of Maine Subsurface Waste Water Disposal Rules. When the Planning Board grants a waiver pursuant to this paragraph, the final plan to be recorded at the Registry of Deeds shall indicate the waiver granted and the date on which it was granted.

Except as specifically approved by the Maine Department of Environmental Protection or United States Army Corps of Engineers, roads shall be located to avoid crossing a wetland, tributary stream, or water body and must be set back at least two hundred fifty (250) feet from the upland edge of moderate or high value wetlands, at least seventy-five (75) feet from the upland edge of a coastal or freshwater wetland, and at least twenty-five (25) feet from the upland edge of a forested wetland.

Any cutting of vegetation or timber harvesting in a wetland area described in this Section or within the setbacks outlined above shall be conducted in accordance with Section 11.15 of the Town’s Basic Land Use Ordinance or, where applicable, Section 15.14 of the Shoreland Zoning Ordinance.

Citizen’s Note: The filling or draining of a water body, tributary stream, wetland, or pond will usually require State and Federal approval.

9.11. Impact on Groundwater

9.11.1. The proposed subdivision plan will not alone, or in conjunction with abutters or other existing activities, adversely affect the quality or quantity of groundwater.

9.11.2. A subdivision plan must not increase the nitrate concentration in the groundwater at the boundary to more than ten (10) milligrams per liter.
9.11.3. Subsurface wastewater 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 are recommended in the assessment, those standards must be included as a note on the final plan.

9.11.4. The proposed subdivision plan shall use on-site techniques to assure that the amount of aquifer recharge post-development is no less than the amount before development.

9.11.5. Groundwater withdrawals by a proposed subdivision shall not lower the water table beyond the boundaries of the subdivision.

9.11.6. Water conservation devices shall be used by the applicant to minimize negative groundwater impacts of the development.


9.12.1. The Planning Board shall consider the impact of the proposed subdivision on erosion, drainage, and runoff on the development itself and on adjacent properties and water bodies. In assessing impacts, the Planning Board shall consider site visits, existing drainage problems, topographical information, and, if deemed necessary, a runoff analysis based on a twenty-five (25) year storm as submitted by the applicant. Subdivisions of five (5) or more lots must be reviewed and endorsed by an independent consultant hired by the Town.

9.12.2. Adequate provisions must be made for disposal of all storm-water generated within the subdivision and any drained groundwater through a management system of swales, culverts, underdrains, and storm drains. Stormwater shall be treated to remove oil, grease, sediment, and other contaminants prior to discharge into a water body or tributary stream.

9.12.3. The stormwater management system must be designed to conduct stormwater flows to existing water courses or storm drains, except where retention basins are designed or groundwater recharge is desirable. The stormwater management system shall make provisions so as to not have adverse effect on neighboring properties, downstream water quality, soil erosion, or the public drainage system.

9.12.3.1. The minimum size for any storm drainage pipe shall be twelve (12) inches. All downstream pipes must be the same size or larger. Pipe must be embedded in a fine granular material.

9.12.3.2. Catch basins must be installed where necessary.

9.12.3.3. Outlets must be stabilized against soil erosion.

9.12.4. Stormwater runoff systems must infiltrate, detain, or retain water falling on the site such that the rate of flow from the site does not exceed that which would occur in the undeveloped state.

9.12.5. Where a subdivision is traversed by a stream, tributary stream, or surface water drainage way, the surface water runoff to be created by the subdivision shall be controlled. Easements for existing or proposed drainage rights-of-way shall be provided with swales, culverts, catch basins, or other means of channeling surface water within the subdivision.
and over other properties. The easements or rights-of-way shall be at least thirty (30) feet wide and substantially conform with the lines of existing and proposed drainage ways.

9.13. **Offshore Islands**

Subdivisions proposed for offshore islands will require deeded mainland support facilities including private landing and at least two (2) parking spaces per lot.

9.14. **Aesthetic, Cultural, and Natural Values**

The proposed subdivision plan will preserve the scenic and natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.

The developer may offer the Town, Land Trust, or appropriate conservation group the title or easement to existing and future points of public access to the shoreline and open spaces valuable for aesthetic, historic, or wildlife habitat or used for traditional recreation.

The Planning Board may require the inclusion of a note on the subdivision plan and deed restriction on the affected lots restricting the clearing of trees to those areas designated on the subdivision plan.

9.14.1. All subdivision plans must conform with the wildlife management guidelines developed by the Maine Department of Inland Fisheries and Wildlife (MIFW) for the protection of significant wildlife habitat. Any clearing of vegetation that takes place within seventy-five (75) feet of the upland edge of a wetland designated as high or moderate value for waterfowl habitat by the MIFW or in the Comprehensive Plan shall be limited to that which is necessary for allowed uses. This restriction shall appear as a note on the subdivision plan and as a deed restriction on the affected lots.

9.14.2. All subdivisions must be designed so as not adversely to impact rare natural areas as identified by the Natural Heritage Data Base in the Department of Economic and Community Development.

9.14.3. All subdivisions must be designed so that the completed development shall protect shellfish habitats and other marine environments.

9.14.4. All subdivisions shall be designed to protect historic, archaeological, scenic, or other critical resources known to exist in the proposed subdivision.

9.14.5. All subdivisions must be designed to ensure that important scenic areas and open spaces, as identified in the Comprehensive Plan for Harpswell, are maintained.

9.14.6. If the land proposed for subdivision is located on Route 24, Route 123, Cundy's Harbor Road, or Mountain Road and at the time of application is forested, a wooded buffer strip no less than twenty-five (25) feet in width shall be left along the road right-of-way. If at the time of application, the land is not wooded, a buffer strip no less than twenty-five (25) feet in width shall be left along the road right-of-way.
9.15. Traffic

9.15.1. The proposed subdivision plan will not cause unreasonable highway or public road congestion or unsafe conditions for vehicular traffic and pedestrians.

9.15.2. General Requirements

9.15.2.1. Proposed subdivisions must provide for safe access to and from public and private roads. Safe access shall be assured by providing adequate access points with respect to sight distances, intersections, schools, and other traffic generators. An entrance permit will be required from the Maine Department of Transportation. The road serving the subdivision shall be adequate to carry the anticipated traffic.

9.15.2.2. Provisions must be made for providing and maintaining convenient and safe emergency vehicle access to all structures at all times.

9.15.2.3. The proposed subdivision plan must provide for safe and convenient access for pedestrians within the subdivision and from the subdivision to surrounding development and open areas.

9.15.2.4. Upon receipt of the subdivision plan, the Planning Board may forward it to the Road Commissioner or to the Town's Consulting Engineer for review and comment.

9.15.3. Road Design and Construction Standards

9.15.3.1. The road design and construction standards contained in the Road Ordinance must be met by all roads within developments reviewed under this Ordinance, regardless of whether the road is intended to be public or private. If the applicant can provide clear and convincing evidence that an alternate road design is necessary to preserve community character and the resulting design will not create safety or maintenance problems for the Town, the Planning Board may waive the travel way width, shoulder width, or slope requirements of the Road Ordinance.

9.15.3.2. All roads must be platted along contour elevations which will result in minimum grades and greatest visibility whenever practicable, with consideration given for anticipated use of the land.

9.15.3.3. The proposed road layout must be coordinated with the road system of the surrounding areas. All roads must provide for the continuation of or connection to existing roads in surrounding areas and provide means of ingress and egress for surrounding lots or parcels of land.

Where necessary, as determined by the Planning Board, to safeguard against hazards for traffic and pedestrians and/or to preserve the traffic bearing capacity of existing roads, provisions shall be made for turning lanes, guard rails, traffic directional islands, frontage roads, shared driveways, sidewalks, bicycle ways, and traffic controls on existing roads. The applicant will pay for any safety improvement required on existing roads as a result of the subdivision plan.
9.16. **Homeowners/Landowners Association**

If commonly owned property is proposed, the subdivision plan shall have a Homeowners/Landowners Association which, at a minimum, shall provide for the following:

9.16.1. Covenants for mandatory membership in the Homeowners/Landowners association setting forth the owners' rights, interests, and privileges in the association and the common property and facilities, to be included in the deed for each lot or dwelling.

9.16.2. Articles of incorporation of the proposed Homeowners/Landowners association as a not-for-profit corporation.

9.16.3. By-laws of the proposed Homeowners/Landowners association specifying the responsibilities and authority of the association, the operating procedures of the association, and providing for proper capitalization of the association to cover the costs of major repairs, maintenance, and replacement of common facilities.

9.16.4. Where a proposed subdivision would use an existing private road(s) for access, provision requiring the subdivision developer and/or lot owners to contribute fairly to the cost of maintenance, repair, and replacement of such road(s).

9.16.5. Where an alternate subdivision design is proposed, provision requiring the subdivision developer and/or lot owners to contribute fairly to the cost of maintenance, repair, and replacement of the common septic system(s), well(s), and/or open space.

These provisions must satisfy the Planning Board that the homeowners/landowners association has the responsibility of maintaining the common property or facilities, has the power to levy annual charges against all owners of lots or dwelling units to defray the expenses connected with the maintenance, repair, and replacement of common property and facilities and tax assessments, has the power to place a lien on the property of members who fail to pay dues or assessments, and that the applicant shall maintain control of the common property, and be responsible for its maintenance until development sufficient to support the association has taken place.

The developer shall maintain control of common open space and facilities and be responsible for their maintenance until at least fifty-one percent (51%) of the development's lots or units have been completed and sold, with evidence of such completion and sales submitted to and approved by the Planning Board.

Covenants for mandatory membership in the association shall be approved by the Planning Board and included in the deed for each lot or unit or incorporated by reference from a master document recorded in the Cumberland County Registry of Deeds.

9.17. **Community Docks**

For any subdivision located in whole or in part the Shoreland Zone, no new wharf, pier, dock and/or float shall be constructed to service only one lot if the upland area on which the wharf, pier, dock and/or float is proposed to be located may reasonably be arranged to service more than one lot, in which case the wharf, pier, dock and/or float may only be improved and used as a community dock for as many of the lots in the subdivision as it can reasonably accommodate.
Community docks shall be reviewed and approved by the Planning Board in accordance with the terms of the Shoreland Zoning Ordinance.

9.18. Workforce Housing
Any subdivision that is to include Workforce Housing Units or Lots shall comply with Section 11.18, Workforce Housing, of the Town’s Basic Land Use Ordinance, as may be amended from time to time.

9.19. Spaghetti Lots are prohibited If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond, or coastal wetland, as these features are defined in Title 38, Section 480-B, none of the lots created within the subdivision shall have a lot depth to shore frontage ratio greater than 5 to 1.

9.20. Liquidation harvesting Timber on the parcel being subdivided has not been harvested in violation of rules adopted pursuant to Title 12, Section 8869 Subsection 14.

SECTION 10. PERFORMANCE GUARANTEE

10.1. Requirement
Prior to approval of the subdivision plan, the Planning Board shall require documentation that the applicant has financial capacity to carry out the proposed project. A performance guarantee, letter of credit or similar agreement with the Planning Board may be required for the following, whether on-site or off-site:

10.1.1. The construction of roads and/or buffer improvements;
10.1.2. The construction of any water supply or sewage system other than individual on-site facilities;
10.1.3. The construction of drainage systems, erosion control measures, or water supply systems for fire protection; and
10.1.4. The construction of other improvements, such as buffer strips, intended to minimize adverse effects on the public or on abutting properties.

10.2. Form of Guarantee
The performance guarantee may be tendered as a certified check payable to the Town, a savings account passbook in the name of the Town, an irrevocable letter of credit from a financial institution acceptable to the Selectmen, or a faithful performance bond running to the Town and issued by a surety company licensed to do business in the State of Maine and acceptable to the Selectmen.

10.3. Amount of Guarantee
The amount of the performance guarantee is one hundred twenty-five percent (125%) of the cost of the requirements of Subsection 10.1. All guarantees are conditioned upon the completion of
all such improvements within two (2) years from the date of approval or another agreed upon date based on Section 8.12 of this Ordinance.

10.4. Release of Guarantee

Prior to the release of any part of the performance guarantee, the Planning Board shall determine to its satisfaction, in part upon the report of the CEO or the Town's consultant and whatever other agencies and departments may be involved, that the proposed improvements meet or exceed the design and construction requirements for that portion of the improvements for which the release is requested.

10.5. Default

If, upon inspection, the CEO or the Town's consultant finds that any of the required improvements have not been constructed in accordance with the approved plan and specifications filed as part of the application, he or she shall so report in writing to the Board of Selectmen, the Planning Board, and the applicant. The performance guarantee shall then remain in place until the provisions of Subsection 10.4 are met.

If the requirements of Subsection 10.4 are not met within a reasonable period of time after such notice, the Selectmen may utilize the funds from the guarantee to cause the completion of the improvements or to restore the site to its pre-development condition.

SECTION 11. PUBLIC ACCEPTANCE OF ROADS, EASEMENTS, OR OPEN SPACE

The approval by the Planning Board of a subdivision plan shall not constitute or be evidence of any acceptance by the Town of any road, easement, or open space shown on such plan. Such acceptance may only be accomplished by the voters of the Town at Town Meeting.

SECTION 12. ENFORCEMENT

12.1. No building permit shall be issued under the Town's Ordinance, no building or site disturbance shall commence, and no plan of a division or development of land within the Town which constitutes a subdivision shall commence until the plan is recorded in the Cumberland County Registry of Deeds.

12.2. No person, firm, corporation, or other legal entity may sell, lease, develop, build upon, occupy any building or structure, or convey for consideration, offer or agree to sell, lease, develop, build upon, occupy any building or structure, or convey for consideration any land in a subdivision which has not been approved by the Planning Board and recorded in the Cumberland County Registry of Deeds, nor may any person, firm, corporation, or other legal entity convey any land in any approved subdivision plan unless the required permanent markers are set.

12.3. No person, firm, corporation, or other legal entity may convey, offer, or agree to convey any land in an approved subdivision which is not shown on the approved plan as a separate lot.

12.4. Development of a subdivision without Planning Board approval is a violation of this Ordinance and State law.
12.5. Violations of this Ordinance are punishable in accordance with the 30-A M.R.S.A. §4452, as may be amended from time to time.

SECTION 13. EXPIRATION OF SUBDIVISION APPROVAL

Approval of a subdivision plan shall lapse if the applicant, or his or her successor, has not substantially started construction of approved improvements within one (1) year or within such time period as may be agreed upon in writing by the Planning Board and the applicant. One (1), one (1) year extension may be granted by the Planning Board. Three (3) months prior to the expiration date for substantial start of construction, the CEO shall notify the applicant by certified mail of the date of expiration.

SECTION 14. APPEALS

Any aggrieved party who participated in the proceedings before the Planning Board may take an appeal to the Board of Appeals within forty-five (45) days from the date of any decision of the Planning Board.

SECTION 15. INTERPRETATION, VALIDITY, CONFLICT OF ORDINANCES, AND EFFECTIVE DATE

15.1. Editorial Notes

Throughout this Ordinance there are editorial "citizen’s notes" which are reproduced in italicized print. These notes shall not be considered part of this Ordinance as adopted by the Town, but shall only be considered guides to the intent of Ordinance provisions and their proper interpretation.

15.2. Validity, Conflict of Ordinances, and Effective Date

Should any section or provision of this Ordinance for any reason be held void and invalid, it shall not affect the validity of any other section or provision.
Town of Harpswell
Use of Firearms Ordinance

Enacted March 6, 1999
Amended October 23, 1999

1. Definition

For the purposes of this Ordinance, a firearm is defined in Maine Statutes, Title 17-A, section 2, sub-section 12-A, and Title 12, section 7001, sub-section 8.

2. Discharge of firearms

   a. To the extend permitted by and subject to Maine and U.S. law, only the following types of firearms may be discharged within the Town of Harpswell: shotguns, rimfire arms, and black powder guns.

   b. Fully automatic firearms of any type may not be discharged within the Town of Harpswell.

   c. It shall be unlawful for any person to discharge a firearm within three hundred (300) feet of any dwelling without the written permission of the owner or, in his absence, of an adult occupying the dwelling.

   d. The provisions of this Ordinance shall not apply to any person acting under the provisions of Title 17-A, sections 104 through 108, which includes the defense of persons and property.

   e. Target Practice may be engaged in on private property with the written permission of the property owner and so long as such practice conforms to the guidelines for shooting ranges established by the National Rifle Association.

3. Penalties

  Any person violating any part of this Ordinance shall be subject to a fine of not less than $50.00 and no more than $1,000.00 for each violation. Such fine on the complaint shall be recovered for the use of the Town of Harpswell.

4. Repeal

  This Ordinance repeals and replaces the Use of Firearms Ordinance adopted March 19, 1988.
WIRELESS TELECOMMUNICATIONS FACILITIES ORDINANCE
Adopted March 6, 1999
Amended March 10, 2007
Amended March 12, 2011
Amended March 10, 2018

CONTENTS

Section 1 Title.................................................................................................................. 2
Section 2 Authority............................................................................................................ 2
Section 3 Purpose............................................................................................................. 2
Section 4 Conflict and Severability.................................................................................. 3
  4.1 Conflicts with other Ordinances
  4.2 Severability
Section 5 Applicability..................................................................................................... 3
  5.1 Exemptions
  5.2 Existing Antennas
Section 6 Review and Approval Authority...................................................................... 4
  6.1 Approval Required
  6.2 Approval Authority
Section 7 Approval Process............................................................................................. 4
  7.1 Pre-Application Conference
  7.2 Application
  7.3 Submission Waiver
  7.4 Fees
  7.5 Notice of Complete Application
  7.6 Public Hearing
  7.7 Approval
Section 8 Standards of Review......................................................................................... 11
  8.1 CEO Approval Standards
  8.2 Planning Board Approval Standards
  8.3 Standard Conditions of Approval
Section 9 Amendment to an Approved Application......................................................... 15
Section 10 Abandonment................................................................................................ 15
Section 11 Appeals........................................................................................................... 15
Section 12 Administration and Enforcement.................................................................... 15
Section 13 Penalties......................................................................................................... 16
Section 14 Definitions....................................................................................................... 16
Section 15 Effective Date................................................................................................. 18
Section 1. Title

This Ordinance shall be known and cited as the "Wireless Telecommunications Facilities Siting Ordinance" of Harpswell, Maine, (hereinafter referred to as the “ordinance”).

Section 2. Authority

This ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section 1 of the Maine Constitution; the provisions of Title 30-A M.R.S.A. Section 3001 (Home Rule), and the provisions of the Planning and Land Use Regulation Act, Title 30-A M.R.S.A. Section 4312 et seq.

Section 3. Purpose

The purpose of this ordinance is to provide a process and a set of standards for the construction of wireless telecommunications facilities in order to:

Implement a municipal policy concerning the provision of wireless telecommunications services, and the siting of their facilities;

Establish clear guidelines, standards and time frames for the exercise of municipal authority to regulate wireless telecommunications facilities;

Allow competition in telecommunications service;

Encourage the provision of advanced telecommunications services to the largest number of businesses, institutions and residents of Harpswell;

Permit and manage reasonable access to the public rights of way of Harpswell for telecommunications purposes on a competitively neutral basis;

Ensure that all telecommunications carriers providing facilities or services within Harpswell comply with the ordinances of Harpswell;

Ensure that Harpswell can continue to fairly and responsibly protect the public health, safety and welfare;

Encourage the colocation of wireless telecommunications facilities, thus helping to minimize adverse visual impacts on the community;

Enable Harpswell to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development;

Further the goals and policies of the comprehensive plan, while promoting orderly development of the town with minimal impacts on existing uses; and
Section 4. Conflict and Severability

4.1 Conflicts with other Ordinances

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

4.2 Severability

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

Section 5. Applicability

This local land use ordinance applies to all construction and expansion of wireless telecommunications facilities, except as provided in Section 5.1.

5.1 Exemptions

The following are exempt from the provisions of this ordinance:

5.1.1 Emergency Wireless Telecommunications Facility. Temporary wireless communication facilities for emergency communications by public officials.

5.1.2 Amateur (ham) radio stations. Amateur (ham) radio stations licensed by the Federal Communications Commission (FCC) with antennas that do not exceed seventy-five (75) feet in height. Amateur (ham) radio antennas may exceed seventy-five (75) feet in height if the Planning Board finds that the proposed antenna meets the standards of Sections 8.2.4, 8.2.5, 8.2.6, 8.2.7, 8.2.8, 8.2.9, 8.2.11, 8.2.12, and 8.2.13.

5.1.3 Parabolic antenna. Parabolic Antennas less than seven (7) feet in diameter, that are an accessory use of the property.

5.1.4 Maintenance or repair. Maintenance, repair or reconstruction of a wireless telecommunications facility and related equipment, provided that there is no change in the height or any other dimension of the facility.

5.1.5 Temporary wireless telecommunications facility. Temporary wireless telecommunications facility, in operation for a maximum period of one hundred eighty (180) days.
5.2 Existing wireless telecommunications facilities.

Wireless telecommunications facilities existing prior to March 15, 1998, that were in compliance with the Town’s zoning regulations as of that date, or wireless telecommunications facilities that were or have been constructed on or after March 15, 1998 in compliance with the provisions of this Ordinance then in effect, are considered to be existing wireless telecommunications facilities for purposes of this Ordinance. Any modifications in the size or use of an existing wireless telecommunications facility must comply with the requirements of this Ordinance. Except as provided herein, an existing wireless telecommunications facility may not be enlarged, expanded or increased in size.

**Section 6. Review and Approval Authority**

6.1 Approval Required

No person shall construct or expand a wireless telecommunication facility without approval of the Code Enforcement Officer (CEO) or the Planning Board as follows:

6.1.1 Expansion of an Existing Facility and Colocation. Approval by the CEO is required for any expansion of an existing wireless telecommunications facility that increases the height of the facility by no more than 20 feet; accessory use of an existing wireless telecommunications facility; or colocation on an existing wireless telecommunications facility.

6.1.2 New Construction. Approval of the Planning Board is required for construction of a new wireless telecommunications facility; and any expansion of an existing wireless telecommunications facility that increases the height of the facility by more than 20 feet.

6.2 Approval Authority

In accordance with Section 6.1 above, the CEO or Planning Board shall review applications for wireless telecommunications facilities, and make written findings on whether the proposed facility complies with this Ordinance.

**Section 7. Approval Process**

7.1 Pre-Application Conference

All persons seeking approval of the CEO or the Planning Board under this ordinance shall meet with the CEO no less than thirty (30) days before filing an application. At this meeting, the CEO shall explain to the applicant the ordinance provisions, as well as application forms and submissions that will be required under this ordinance.
7.2  Application

All persons seeking approval of the CEO or the Planning Board under this ordinance shall submit an application as provided below. The CEO shall be responsible for ensuring that notice of the application has been published in a newspaper of general circulation in the community.

7.2.1  Application for CEO Approval. Applications for permit approval by the CEO must include the following materials and information:

7.2.1.1  Documentation of the applicant’s right, title, or interest in the property where the facility is to be sited, including name and address of the property owner and the applicant.

7.2.1.2  A copy of the FCC license for the facility or a signed statement from the owner or operator of the facility attesting that the facility complies with current FCC regulations.

7.2.1.3  Identification of districts, sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800).

7.2.1.4  Location map and elevation drawings of the proposed facility and any other proposed structures, showing color, and identifying structural materials.

7.2.1.5  For proposed expansion of a facility, a signed statement that commits the owner of the facility, and his or her successors in interest, to:

7.2.1.5.1  respond in a timely, comprehensive manner to a request for information from a potential colocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;

7.2.1.5.2  negotiate in good faith for shared use by third parties;

7.2.1.5.3  allow shared use if an applicant agrees in writing to pay reasonable charges for colocation;

7.2.1.5.4  require no more than a reasonable charge for shared use, based on community rates and generally accepted accounting principles. This charge may include but is not limited to a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction and maintenance, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.
7.2.2 Application for Planning Board Approval. An application for approval by the Planning Board must be submitted to the Code Enforcement Officer. The application must include the following information:

7.2.2.1 Documentation of the applicant’s right, title, or interest in the property on which the facility is to be sited, including name and address of the property owner and the applicant.

7.2.2.2 A copy of the FCC license for the facility, or a signed statement from the owner or operator of the facility attesting that the facility complies with current FCC regulations.

7.2.2.3 A USGS 7.5 minute topographic map showing the location of all structures and wireless telecommunications facilities above 150 feet in height above ground level, except antennas located on roof tops, within a five (5) mile radius of the proposed facility, unless this information has been previously made available to the municipality. This requirement may be met by submitting current information (within thirty days of the date the application is filed) from the FCC Tower Registration Database.

7.2.2.4 A site plan:

7.2.2.4.1 prepared and certified by a professional engineer registered in Maine indicating the location, type, and height of the proposed facility, antenna capacity, on-site and abutting off-site land uses, means of access, setbacks from property lines, and all applicable American National Standards Institute (ANSI) technical and structural codes;

7.2.2.4.2 certification by the applicant that the proposed facility complies with all FCC standards for radio emissions is required; and

7.2.2.4.3 a boundary survey for the project performed by a land surveyor licensed by the State of Maine.

7.2.2.5 A scenic assessment, consisting of the following:

7.2.2.5.1 Elevation drawings of the proposed facility, and any other proposed structures, showing height above ground level;

7.2.2.5.2 A landscaping plan indicating the proposed placement of the facility on the site; location of existing structures, trees, and other significant site features; the type and location of plants proposed to screen the facility; the method of fencing, the color of the structure, and the proposed lighting method.
7.2.2.5.3 Photo simulations of the proposed facility taken from perspectives determined by the Planning Board, or their designee, during the pre-application conference. Each photo must be labeled with the line of sight, elevation, and with the date taken imprinted on the photograph. The photos must show the color of the facility and method of screening.

7.2.2.5.4 A narrative discussing:

7.2.2.5.4.1 the extent to which the proposed facility would be visible from or within a designated scenic resource,

7.2.2.5.4.2 the tree line elevation of vegetation within one hundred (100) feet of the facility, and

7.2.2.5.4.3 the distance to the proposed facility from the designated scenic resource’s noted viewpoints.

7.2.2.6 A written description of how the proposed facility fits into the applicant’s telecommunications network. This submission requirement does not require disclosure of confidential business information.

7.2.2.7 Evidence demonstrating that no existing building, site, or structure can accommodate the applicant's proposed facility, the evidence for which may consist of any one or more of the following:

7.2.2.7.1 Evidence that no existing facilities are located within the targeted market coverage area as required to meet the applicant's engineering requirements,

7.2.2.7.2 Evidence that existing facilities do not have sufficient height or cannot be increased in height at a reasonable cost to meet the applicant's engineering requirements,

7.2.2.7.3 Evidence that existing facilities do not have sufficient structural strength to support applicant's proposed antenna and related equipment. Specifically:

7.2.2.7.3.1 Planned, necessary equipment would exceed the structural capacity of the existing facility, considering the existing and planned use of those facilities, and these existing facilities cannot be reinforced to accommodate the new equipment.

7.2.2.7.3.2 The applicant's proposed antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna or equipment on the existing
facility would cause interference with the applicant's proposed antenna.

7.2.2.7.3 Existing or approved facilities do not have space on which planned equipment can be placed so it can function effectively.

7.2.2.7.4 For facilities existing prior to the effective date of this ordinance, evidence that the fees, costs, or contractual provisions required by the owner in order to share or adapt an existing facility are unreasonable. Costs exceeding the pro rata share of a new facility development are presumed to be unreasonable. This evidence shall also be satisfactory for a tower built after the passage of this ordinance;

7.2.2.7.5 Evidence that the applicant has made diligent good faith efforts to negotiate colocation on an existing facility, building, or structure, and has been denied access;

7.2.2.8 Identification of districts, sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800).

7.2.2.9 A signed statement stating that the owner of the wireless telecommunications facility and his or her successors and assigns agree to:

7.2.2.9.1 respond in a timely, comprehensive manner to a request for information from a potential colocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;

7.2.2.9.2 negotiate in good faith for shared use of the wireless telecommunications facility by third parties;

7.2.2.9.3 allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for colocation;

7.2.2.9.4 require no more than a reasonable charge for shared use, based on community rates and generally accepted accounting principles. This charge may include but is not limited to a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the useful life span of the facility.
7.2.2.10 A form of surety approved by the Planning Board to pay for the costs of removing the facility if it is abandoned.

7.2.2.11 Evidence that a notice of the application has been published in a local newspaper of general circulation in the community.

7.3 Submission Waiver

The CEO or Planning Board, as appropriate, may waive any of the submission requirements based upon a written request of the applicant submitted at the time of application. A waiver of any submission requirement may be granted only if the CEO or Planning Board finds in writing that due to special circumstances of the application, the information is not required to determine compliance with the standards of this Ordinance.

7.4 Fees

7.4.1 CEO Application Fee

An application for CEO approval shall include payment of an application fee established by the Selectmen. The application shall not be considered complete until this fee is paid. The applicant is entitled to a refund of the application fee if the application is withdrawn within fifteen (15) days of date of filing, less all expenses incurred by Harpswell to review the application.

7.4.2 Planning Board Application Fee

An application for Planning Board approval shall include payment of an application fee established by the Selectmen. The application shall not be considered complete until this fee is paid. An applicant is entitled to a refund of the application portion of fee if the application is withdrawn within fifteen (15) days of date of filing, less all expenses incurred by the Harpswell to review the application.

7.4.3 Planning Board Review Fee

An applicant for approval by the Planning Board shall pay all reasonable and customary fees incurred by the municipality that are necessary to review the application. The review fee shall be paid in full prior to the start of construction.

That portion of the review fee not used shall be returned to the applicant within fourteen (14) days of the Planning Board’s decision.

7.5 Notice of Complete Application

Upon receipt of an application, the CEO shall provide the applicant with a dated receipt. Within thirty (30) working days of receipt of an application the CEO shall review the application and
determine if the application meets the submission requirements. The CEO or Planning Board, as appropriate, shall review any requests for a waiver from the submission requirements and shall act on these requests prior to determining the completeness of the application.

If the application is complete, the CEO shall notify the applicant in writing of this determination and require the applicant to provide a sufficient number of copies of the application to the Planning Board.

If the application is incomplete, the CEO shall notify the applicant in writing, specifying the additional materials or information required to complete the application.

If the application is deemed to be complete, and requires Planning Board review, the CEO shall notify all abutters to the site as shown on the Assessor’s records, by first-class mail, that an application has been accepted. This notice shall contain a brief description of the proposed activity and the name of the applicant, give the location of a copy of the application available for inspection, and provide the date, time, and place of the Planning Board meeting at which the application will be considered. Failure on the part of any abutter to receive such notice shall not be grounds for delay of any consideration of the application nor denial of the project.

7.6 Public Hearing

For applications for Planning Board approval under Section 6.1.2, a public hearing shall be held within 35 days of the notice of the complete application.

7.7 Approval

7.7.1 CEO Approval. Within thirty (30) days of receiving a complete application for approval under Section 6.1.1, the CEO shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based. The CEO shall approve the application if the CEO finds that the application complies with the provisions in Section 8.1 of this ordinance.

The CEO shall notify all abutters of the decision to issue a permit under this section. The time period may be extended upon agreement between the applicant and the CEO.

7.7.2 Planning Board Approval. Within ninety (90) days of receiving a complete application for approval under Section 6.1.2, the Planning Board shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based. However, if the Planning Board has a waiting list of applications that would prevent the Planning Board from making a decision within the required ninety (90) day time period, then a decision on the application shall be issued within sixty (60) days of the public hearing, if necessary, or within sixty (60) days of the completed Planning Board review. This time period may be extended upon agreement between the applicant and the Planning Board.
Section 8. Standards of Review

To obtain approval from the CEO or the Planning Board, an application must comply with the standards in this section.

8.1 CEO Approval Standards

An application for approval by the CEO under Section 6.1.1 must meet the following standards.

8.1.1 The proposed facility is an expansion, accessory use, or colocation to a structure existing at the time the application is submitted.

8.1.2 The applicant has sufficient right, title, or interest to locate the proposed facility on the existing structure.

8.1.3 The proposed facility increases the height of the exiting structure by no more than twenty (20) feet.

8.1.4 The proposed facility will be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable.

8.1.5 The proposed facility, to the greatest degree practicable, shall have no unreasonable adverse impact upon districts, sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800).

8.2 Planning Board Approval Standards

An application for approval by the Planning Board under Section 6.1.2 must meet the following standards.

8.2.1 Priority of Locations. New wireless telecommunications facilities must be located according to the priorities below. The applicant shall demonstrate that a facility of a higher priority cannot reasonably accommodate the applicant’s proposed facility.

8.2.1.1 Colocation on an existing wireless telecommunications facility or other existing structure on (a) the parcel on which the Harpswell television transmitting tower is located, or (b) the parcel on which the Town Office and the Recycling Center are located, or (c) the water tower located at Mitchell Field, or

8.2.1.2 Within the area defined in 8.2.1.1 above but not collocated.

8.2.2 Siting on Municipal Property. If an applicant proposes to locate a new wireless telecommunications facility, or expand an existing facility on municipal property, the
applicant must show the following:

8.2.2.1 The proposed location complies with applicable municipal policies and ordinances.

8.2.2.2 The proposed facility will not interfere with the intended purpose of the property.

8.2.2.3 The applicant has adequate liability insurance and a lease agreement with the municipality that includes reasonable compensation for the use of the property and other provisions to safeguard the public rights and interests in the property.

8.2.3 Design for Colocation. A new wireless telecommunications facility and related equipment must be designed and constructed to accommodate expansion for future colocation of at least three additional wireless telecommunications facilities or providers. However, the Planning Board may waive or modify this standard where the district height limitation effectively prevents future colocation.

8.2.4 Height. A new wireless telecommunications facility must be no more than three hundred (300) feet in height.

8.2.5 Setbacks. A new or expanded wireless telecommunications facility must comply with the setback requirements for the area or zoning district in which it is located, or be set back one hundred five percent (105%) of its height from all property lines, whichever is greater. The setback may be satisfied by including the areas outside the property boundaries if secured by an easement; provided, however, that the Planning Board may reduce the setback upon a showing by the applicant that the facility is designed to collapse in a manner that will not harm other property. This reduction may not reduce the setback below the requirements of any other applicable ordinance of the Town of Harpswell.

8.2.6 Landscaping. A new wireless telecommunications facility and related equipment must be screened with plants from view by abutting properties, to the maximum extent practicable. Existing plants and natural land forms on the site shall also be preserved to the maximum extent practicable.

8.2.7 Fencing. A new wireless telecommunications facility must be fenced to discourage trespass on the facility and to discourage climbing on any structure by trespassers.

8.2.8 Lighting. A new wireless telecommunications facility must be illuminated only as necessary to comply with FAA or other applicable state and federal requirements. Required lighting shall be up-shielded to minimize the visual impact to local residents; provided, however, that such shielding is permissible by FAA or other applicable state and federal requirements.

8.2.8.1 Security lighting may be used as long as it is shielded to be down-directional
to retain light within the boundaries of the site, to the maximum extent practicable; provided, however, that the proposed lighting does not exceed 20’.

8.2.9 Color and Materials. A new wireless telecommunications facility must be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable. Unless otherwise required, muted colors, earth tones, and subdued hues shall be used. No business identification or advertising is permitted on any such facility.

8.2.10 Structural Standards. A new wireless telecommunications facility must comply with the current Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures."

8.2.10.1 Guyed towers should use daytime visual markers (e.g., bird diverter devices) on the guy wires to prevent collisions by local and migratory bird species.

8.2.11 Visual Impact. The proposed wireless telecommunications facility will have no unreasonable adverse impact upon designated scenic resources within the Town, as identified either in the Harpswell Comprehensive Plan, or by a State or federal agency.

8.2.11.1 In determining the potential unreasonable adverse impact of the proposed facility upon the designated scenic resources, the Planning Board shall consider the following factors:

8.2.11.1.1 The extent to which the proposed wireless telecommunications facility is visible above tree line, from the viewpoint(s) of the impacted designated scenic resource;

8.2.11.1.2 the type, number, height, and proximity of existing structures and features, and background features within the same line of sight as the proposed facility;

8.2.11.1.3 the extent to which the proposed wireless telecommunications facility would be visible from the viewpoint(s);

8.2.11.1.4 the amount of vegetative screening;

8.2.11.1.5 the distance of the proposed facility from the viewpoint and the facility’s location within the designated scenic resource; and

8.2.11.1.6 the presence of reasonable alternatives that allow the facility to function consistently with its purpose.

8.2.12 Noise. During construction, repair, or replacement, operation of a back-up power
generator at any time during a power failure, and testing of a back-up generator between 8 a.m. and 9 p.m. is exempt from existing municipal noise standards.

8.2.13 Historic & Archaeological Properties. The proposed facility, to the greatest degree practicable, will have no unreasonable adverse impact upon a historic district, site or structure which is currently listed on or eligible for listing on the National Register of Historic Places.

8.3 Standard Conditions of Approval

The following standard conditions of approval shall be a part of any approval or conditional approval issued by the CEO or Planning Board. Where necessary to ensure that an approved project meets the criteria of this ordinance, the Planning Board can impose additional conditions of approval. Reference to the conditions of approval shall be clearly noted on the final approved site plan, and shall include:

8.3.1 The owner of the wireless telecommunications facility and his or her successors and assigns agree to:

8.3.1.1 respond in a timely, comprehensive manner to a request for information from a potential colocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;

8.3.1.2 negotiate in good faith for shared use of the wireless telecommunications facility by third parties;

8.3.1.3 allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for colocation.

8.3.1.4 require no more than a reasonable charge for shared use of the wireless telecommunications facility, based on community rates and generally accepted accounting principles. This charge may include, but is not limited to, a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction and maintenance, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the life span of the useful life of the wireless telecommunications facility.

8.3.2 Upon request by the municipality, the applicant shall certify compliance with all applicable FCC radio frequency emissions regulations.
Section 9  Amendment to an Approved Application

Any changes to an approved application must be approved by the CEO or the Planning Board, in accordance with Section 6.

Section 10  Abandonment

A wireless telecommunications facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The CEO shall notify the owner of an abandoned facility in writing and order the removal of the facility within ninety (90) days of receipt of the written notice. The owner of the facility shall have thirty (30) days from the receipt of the notice to demonstrate to the CEO that the facility has not been abandoned.

If the Owner fails to show that the facility is in active operation, the owner shall have sixty (60) days to remove the facility. If the facility is not removed within this time period, the municipality may remove the facility at the owner's expense. The owner of the facility 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.

If a surety has been given to the municipality for removal of the facility, the owner of the facility may apply to the Planning Board for release of the surety when the facility and related equipment are removed to the satisfaction of the Planning Board.

Section 11  Appeals

Any person aggrieved by a decision of the CEO or the Planning Board under this ordinance may appeal the decision to the Board of Appeals. Written notice of an appeal must be filed with the Board of Appeals within thirty (30) days of the decision. The notice of appeal shall clearly state the reasons for the appeal which contains a concise written statement indicating what decision of the CEO or Planning Board the aggrieved party believes were clearly contrary to specific provisions of this ordinance, what relief is requested, and why it should be granted.

Section 12  Administration and Enforcement

The CEO shall enforce this ordinance. If the CEO finds that any provision of this ordinance has been violated, the CEO shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. The CEO shall order correction of the violation and may take any other legal action to ensure compliance with this ordinance.

The Selectmen, or their authorized agent, are authorized to enter into administrative consent agreements for the purpose of eliminating violations of this ordinance and recovering fines without court action. Such agreements shall not allow a violation of this ordinance to continue unless: there is clear and convincing evidence that the violation occurred as a direct result of erroneous advice.
given by an authorized municipal official upon which the applicant reasonably relied to its detriment and there is no evidence that the owner acted in bad faith; the removal of the violation will result in a threat to public health and safety or substantial environmental damage.

Section 13 Penalties

Any person who owns or controls any building or property that violates this ordinance shall be fined in accordance with Title 30-A M.R.S.A. § 4452. Each day such violation continues after notification by the CEO shall constitute a separate offense.

Section 14 Definitions

The terms used in this ordinance shall have the following meanings:

14.1 "Antenna" means any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio or electromagnetic frequency signals.

14.2 "Antenna Height" means the vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure, even if said highest point is an antenna. Measurement of tower height shall include antenna, base pad, and other appurtenances and shall be measured from the finished grade of the facility site. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

14.3 "Colocation" means the use of a wireless telecommunications facility by more than one wireless telecommunications provider.

14.4 “Designated Scenic Resource” means that specific location, view, or corridor, as identified as a scenic resource in the Harpswell Comprehensive Plan or by a State or federal agency that consists of:

14.4.1 a three dimensional area extending out from a particular viewpoint on a public way or within a public recreational area, focusing on a single object, such as a mountain, resulting in a narrow corridor, or a group of objects, such a downtown skyline or mountain range, resulting in a panoramic view corridor; or

14.4.2 lateral terrain features such as valley sides or woodland as observed to either side of the observer, constraining the view into a narrow or particular field, as seen from a viewpoint on a public way or within a public recreational area.

14.3 “Expansion” means the addition of antennas, towers, or other devices to an existing structure.

14.4 "FAA” means the Federal Aviation Administration, or its lawful successor.
14.5 "FCC" means the Federal Communications Commission, or its lawful successor.

14.6 "Height" means the vertical measurement from a point on the ground at the mean finish grade adjoining the foundation as calculated by averaging the highest and lowest finished grade around the building or structure, to the highest point of the building or structure. The highest point shall exclude farm building components, flagpoles, chimneys, ventilators, skylights, domes, water towers, bell towers, church spires, processing towers, tanks, bulkheads, or other building accessory features usually erected at a height greater than the main roofs of buildings.

14.7 "Historic or Archaeological Resources" means resources that are:

   14.7.1.1 Listed individually in the National Register of Historic Places or eligible for listing on the National Register;

   14.7.1.2 Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;

   14.7.1.3 Individually listed on a state inventory of historic places in states with historic preservation programs approved by the Secretary of the Interior;

   14.7.1.4 Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by Secretary of the Interior through the Maine Historic Preservation Commission; or

   14.7.1.5 Areas identified by a governmental agency such as the Maine Historic Preservation Commission as having significant value as an historic or archaeological resource and any areas identified in the municipality’s comprehensive plan, which have been listed or are eligible to be listed on the National Register of Historic Places.

14.8 "Historic District" means a geographically definable area possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united by past events or aesthetically by plan or physical development and identified in the municipality’s comprehensive plan, which is listed or is eligible to be listed on the National Register of Historic Places. Such historic districts may also comprise individual elements separated geographically, but linked by association or history.

14.9 "Historic Landmark" means any improvement, building or structure of particular historic or architectural significance to the Town relating to its heritage, cultural, social, economic or political history, or which exemplifies historic personages or important events in
local, state or national history identified in the municipality’s comprehensive plan, which have been listed or are eligible to be listed on the National Register of Historic Places.

14.10 “Line of sight” means the direct view of the object from the designated scenic resource.

14.11 "Parabolic Antenna" (also known as a satellite dish antenna) means an antenna which is bowl-shaped, designed for the reception and or transmission of radio frequency communication signals in a specific directional pattern.

14.12 "Principal Use" means the use other than one which is wholly incidental or accessory to another use on the same premises.

14.13 “Public Recreational Facility” means a regionally or locally significant facility, as defined and identified either by State statute or in the municipality's adopted comprehensive plan, designed to serve the recreational needs of municipal property owners.

14.14 “Targeted Market Coverage Area” means the area which is targeted to be served by this proposed telecommunications facility.

14.15 “Unreasonable Adverse Impact” means that the proposed project would produce an end result which is:

14.15.1 excessively out-of-character with the designated scenic resources affected, including existing buildings structures and features within the designated scenic resource, and

14.15.2 would significantly diminish the scenic value of the designated scenic resource.

14.16 “Viewpoint” means that location which is identified either in the municipally adopted comprehensive plan or by a federal or State agency, and which serves as the basis for the location and determination of a particular designated scenic resource.

14.17 "Wireless Telecommunications Facility" or “Facility” means any structure, antenna, tower, or other device which provides radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), common carrier wireless exchange phone services, specialized mobile radio communications (SMR), common carrier wireless exchange access services, and personal communications service (PCS) or pager services.

Section 15. Effective Date

This ordinance becomes effective on March 6, 1999.