

# Unified Development Ordinance

*for the*

*Town of Stonington, Maine*

## DRAFT FOR REVIEW PURPOSES ONLY

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## **Chapter I: General Provisions & Administration**

### **Section I-1    What are the Purposes of This Ordinance?**

This Ordinance shall be known as the “Unified Development Ordinance of the Town of Stonington” (hereinafter “Ordinance”).

The purposes of this Ordinance are to:

1. Promote and conserve the health, safety, and general welfare of the inhabitants of the Town.
2. Encourage orderly growth and coordinated development of lands, buildings, infrastructure and services.
3. Implement the vision and goals of the most recently adopted Comprehensive Plan.
4. Provide for safe building construction, proper site development, adequate circulation, utilities and drainage.
5. Facilitate efficient municipal review and oversight of development.
6. Maintain the largely rural residential character of the Town while protecting residents from incompatible uses and preserving the private property rights of its inhabitants.
7. Preserve retail and pedestrian-focused development on Main Street and other parts of downtown.
8. Expand and nurture economic growth that contributes to the vitality of the Town’s village area and retain the historic and working waterfront character of this area through thoughtful planning and the use of development and design standards.
9. Affirmatively further the purposes of the Federal Fair Housing Act, 42 U.S.C. ch. 45, and the Maine Human Rights Act, 5 M.R.S.A. ch. 337, to achieve the applicable statewide or regional production goal established by the DECD.

### **Section I-2    To Which Activities Does This Ordinance Apply?**

This Ordinance applies to any structure, or any part of a structure, that is proposed to be erected, altered, improved, renovated, enlarged, moved (including removed from, moved onto, or moved within a lot), or demolished; land that is used or occupied; any proposed use, or a change or expansion of a use; and the creation or conveyance of a lot.

This Ordinance shall apply to all building permits, commercial site plan review, and subdivision of land within the Town’s jurisdictional boundaries.

No permit or approval shall be granted unless in compliance with this Ordinance and applicable state laws.

This Ordinance is adopted pursuant to the municipal home-rule powers of the Town under the Maine Constitution, Title 30-A of the Maine Revised Statutes Annotated (M.R.S.A.), and other applicable state enabling statutes.

### **Section I-3 Who Is Administering This Ordinance?**

The CEO, Planning Board, Select Board, and Board of Appeals of the Town are responsible for administering this Ordinance.

**A. The Code Enforcement Officer (CEO)** is responsible for:

1. Enforce the provisions of this Ordinance and the terms and conditions of permits, approvals, or denials issued under this Ordinance, by inspecting premises, investigating complaints, issuing notices of violation, suspending or revoking permits or approvals, participating in legal prosecution of violations as needed, and processing or acting on consent agreements.
2. Keep written records of all essential enforcement-related transactions under this Ordinance, including revocation and suspension actions, inspections, violations investigated, notices of violation issued, legal prosecution of violations, court actions, consent agreements, and penalties imposed.
3. Review and act on all building permit applications in accordance with Chapter II (Building Permits & Building Regulations).
4. Interpret the provisions of this Ordinance, including the meaning of terms used in this Ordinance, when performing the duties in the preceding subsections A.1-3.

**B. The Planning Board** is responsible for:

1. Review and act on applications for site plan approval in accordance with Chapter III (Site Plan Review).
2. Review and act on subdivision applications in accordance with Chapter IV (Subdivision Regulations).
3. Serve as the municipal reviewing authority for purposes of holding public hearings pursuant to 30-A M.R.S.A. § 4352 concerning proposed amendments to the Ordinance.
4. Recommend to the Select Board whether or not an article to amend the Ordinance should be included in the warrant for a regular or special Town meeting.
5. Keep written records of all essential non-enforcement related transactions under this Ordinance, including applications submitted, permits and approvals granted or denied, variances granted or denied, appeals, fees collected, and proposed and enacted amendments to this Ordinance.
6. Interpret the provisions of this Ordinance, including the meaning of terms used in this Ordinance, when performing the duties in the preceding subsections B.1-5.

**C. The Selectboard**, serving as the municipal officers of the Town, has the following duties:

1. Review and act on all matters requiring Selectboard approval.
2. Enter into administrative consent agreements or institute, in the name of the Town, legal proceedings to resolve, enforce, or abate any violation of this Ordinance.
3. Enter into agreements to accept performance guarantees or other bonds instituted to effectuate the goals of this Ordinance.

**D. The Board of Appeals**, duly established and organized pursuant to 30 A.M.R.S.A. § 2691, has the following jurisdiction, duties, and powers in administering this Ordinance:

1. Upon written application, review and act on variance requests, in accordance with the Town's Shoreland Zoning Ordinance.
2. The Board of Appeals does not have jurisdiction to hear appeals from any decision or failure to act of the CEO or Planning Board in the administration of this Ordinance, or from any notices of violation, enforcement orders, suspensions or revocations of permits or approvals, written determinations of no violation, or any other enforcement decisions of the CEO.
3. Any aggrieved person may appeal a decision of the Board of Appeals to the Maine Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure or utilize any other appeal avenues created by the State.

#### **Section I-4     Which Activities Do Not Require Permits or Approvals Under This Ordinance?**

**A.** No permit or approval from the reviewing authority is required for the following activities under this Ordinance as long as the activities are conducted in compliance with applicable standards:

1. Repair, maintenance, and improvement of a structure within the footprint of the structure, including insulation, plumbing, painting, re-roofing, and minor efficiency upgrades such as replacement doors or windows, replacement foundations but not replacement foundations in the shoreland zone. If in the shoreland zone, such activities must comply with the Town's Shoreland Zoning Ordinance.
2. Non-structural residential or household gardening, agricultural, and landscaping activities. If in the shoreland zone, such activities must comply with any applicable dimensional standards in the Town's Shoreland Zoning Ordinance.
3. Non-structural use of land for agriculture or forestry purposes. If in the shoreland zone, such activities must comply with any applicable dimensional standards in the Town's Shoreland Zoning Ordinance. Note that forest management activities, including timber harvesting activities, are regulated by the DACF Bureau of Forestry pursuant to 12 M.R.S.A. §§ 8866 *et seq.*

4. Outside of the shoreland zone:
  - a. Erection of free-standing structures not intended for human habitation (such as dog houses, playhouses, tool sheds, storage buildings, and solar panels) that are not more than 100 square feet in floor area in the aggregate and do not exceed 8 feet in height.
  - b. Construction of farm or fire ponds.
  - c. Short-term siting of temporary shelters such as tents, recreational vehicles, or similar shelters for a period of no more than 120 days per year.
5. Creation or conveyance of a lot that is not part of a subdivision, as defined in 30-A M.R.S.A. § 4401(4).
6. If outside of the shoreland zone, repair and maintenance of an existing road culvert, or replacement of an existing road culvert as long as: (a) the replacement culvert is not more than 25% longer than the culvert being replaced and not longer than 75 feet, (b) erosion control measures are taken to prevent sedimentation of the affected water body, and (c) the culvert does not block fish passage. Ancillary culverting activities, including excavation and filling, are included in this exemption.
7. Archaeological excavation, as long as the excavation is conducted by an archaeologist listed on Level 1 or Level 2 approved list in accordance with the MHPC State Historic Preservation Officer's Standards for Archaeological Work in Maine, 94-089 C.M.R. ch. 812, and adequate erosion control measures are taken to prevent sedimentation of any affected water body.
8. Outside of the shoreland zone, outdoor storage or stockpiles of winter abrasives (sand and salt) used for the maintenance of private or public roads, except for any storage or stockpiles associated with mineral extraction.
9. Replacement or reconstruction of damaged or destroyed public utility transmission and distribution lines and related equipment.

#### **Section I-5 Which Activities Require Permits or Approvals Under This Ordinance?**

- A. A written permit or written approval from the reviewing authority is required before undertaking any of the following activities, unless the activity is listed as not requiring a permit in Section 4:
  1. Erecting, altering, improving, renovating, demolishing, enlarging, or moving (including removing from, moving onto, or moving within a lot) a structure, or any part of a structure.
  2. Establishing, changing, or expanding a land use.
  3. Renewing a discontinued nonconforming use.
  4. Creating a lot that is part of a subdivision or selling, leasing, developing, building upon, or conveying any land in a subdivision, as defined in 30-A M.R.S.A. § 4401(4).
- B. Permits or approvals will be issued only if the reviewing authority determines that the application materials, plans, and proposed structures and uses comply with the requirements of

this Ordinance and any other applicable Town ordinances, regulations, and rules. Any permits required by this Ordinance are in addition to any other permits or approvals required by other rule, law, or ordinance.

### **Section I-6 What Type of Permits are Required?**

- A. **Building Permits.** A building permit from the CEO is required before undertaking any use and any structure as requiring a building permit pursuant to Chapter II.
- B. **Site Plan Approval.** Site plan approval from the Planning Board pursuant to Chapter III (Site Plan Review) is required before undertaking any of the following activities:
  - 1. **Allowed Structures.** Any structure associated as requiring site plan approval, including the construction, alteration, change of use, or enlargement of any existing structure associated with or devoted to a use requiring site plan approval.
  - 2. **Parking, Loading, Outdoor Display.** The expansion of any parking, loading, outdoor display, or storage area of any nonresidential use to a size greater than 2,500 square feet within any 3-year period.
  - 3. **Floor Area, 5,000 sq. ft.** The construction or placement of any new building or structure for a non-residential use, or the expansion or conversion of an existing building for a non-residential use, including accessory buildings and structures, if such buildings or structures have a total area for all floors of 5,000 square feet or more.
  - 4. **Residential Conversion.** The conversion of an existing non-residential use on Main Street, in whole or in part, into a residential use if the new use changes the basic nature of the existing use beyond 50% of its current square footage.
  - 5. **Five or More Units in Structures.** The construction, conversion or expansion of one or more buildings resulting in five or more total dwelling units on the same tract of land.
  - 6. **Three or Four Dwelling Units, In Multiple Structures.** The construction, conversion or expansion of more than one building, resulting in three or four total dwelling units on the same lot.
  - 7. **Amendments.** Any modifications or changes to an approved site plan.
- C. **Subdivision Approval.** Subdivision approval from the Planning Board pursuant to Chapter IV (Subdivision Regulations) is required before selling, leasing, developing, building upon, or conveying for consideration any land in a subdivision, as defined in 30-A M.R.S.A. § 4401(4). Such activities may occur only after a final subdivision plan has been reviewed, approved, and endorsed by the Planning Board as required by Chapter IV (Subdivision Regulations), and an attested copy of the approved and endorsed plan has been recorded in the Hancock County Registry of Deeds.

### **Section I-7 What Must Be Included in An Application for a Permit or Approval?**

Any application for a permit or approval required under this Ordinance must be submitted in writing to the reviewing authority on forms provided by the Town for that purpose and signed and dated by the applicant. It is the responsibility of the applicant to complete the full application form. Each application must be accompanied by:

- A. The name, address, and telephone number of the applicant and the name, address, and telephone number of the property owner, if different from the applicant. Also, the name of the development

project.

- B. A fee as provided in the Town's Fee Schedule.
- C. Except for building permit applications, proof of adequate technical and financial capacity to carry out the proposed activities in conformance with this Ordinance. This includes commitments to hire qualified contractors to perform the work such as those licensed to perform work within the shoreland zone when applicable.
- D. Proof that the applicant holds right, title, or interest in the affected property.
- E. If the applicant is not the property owner, a letter of authorization from the owner.
- F. A map showing the location of the affected property in relation to the vicinity and identifying the property tax map and lot number(s).
- G. A plan drawn to scale showing, at minimum:
  - 1. The dimensions and size of the lot (in square feet or acres) affected by the proposal.
  - 2. Names and locations of all public and private roadways, rights-of-way, and easements on or adjacent to the lot.
  - 3. Names of abutting property owners,
  - 4. The exact size and location of all existing structures and other man-made features of the lot, including their setbacks from all property lines.
  - 5. The exact size and location of all structures proposed to be erected, altered, enlarged, moved, or demolished, including their setbacks from all property lines.
  - 6. All water bodies, wetlands, and protected natural resources, within 250 feet of the property boundaries.
  - 7. All minimum setback lines.
  - 8. All shoreland zoning subdistrict boundaries.
  - 9. Where applicable, the size and location of all areas to be cleared of vegetation and all areas of cut, filling, grading, or other earthmoving activities.
  - 10. Where applicable, the location of soil test pits, subsurface wastewater disposal systems, site drainage, parking lots, driveways, roads, signs, buffer strips, fences, and private wells.
- H. A detailed description of the existing and proposed use of each existing and proposed structure and portion of the affected lot.
- I. Copies of any notices required by this Ordinance, including verification of mailing of notices to abutters.
- J. If the nature of the proposal requires the installation of a subsurface wastewater disposal system, a subsurface wastewater disposal system application (HHE-200 form) approved by the Licensed Plumbing Inspector and, if necessary, the DHHS.
- K. For structures or uses proposed to be served by a public road, an impact statement from the Town identifying any necessary road or culvert upgrades.
- L. For structures or uses proposed to be served by a state roadway, a DOT driveway or entrance permit.
- M. Estimated cost of the proposal.

- N. Copies of any decisions or pending applications of any federal, state, or other local governmental authorities regarding the proposed activities.
- O. Any submission requirements specific to the type of permit or approval being sought, including the following:
  - 1. For building permit applications, a written statement and other evidence demonstrating that the proposal satisfies each of the review standards in Chapter II (Build Permits & Building Regulations).
  - 2. For activities located in the shoreland zone that are allowed with a permit, pre-construction photographs of the shoreline vegetation and development site, and a written statement and other evidence demonstrating that the proposed activity satisfies each of the review criteria, applicable land use standards, and the special exception requirements of the Town's Shoreland Zoning Ordinance, if applicable.
  - 3. For site plan applications, the application submission requirements identified in Chapter III (Site Plan Review).
  - 4. For subdivision applications, the application submission requirements identified in Chapter IV (Subdivision Regulations).
- P. Such other information as may be required by the reviewing authority to determine conformance with this Ordinance.

## **Section I-8     What are the Procedures for Administering Permits and Approvals Under This Ordinance?**

- A. **Dated Receipt—Subdivision Applications.** When a subdivision application is received, the Code Enforcement Officer or their designee will give a dated receipt to the applicant.
- B. **Completeness Review.** Prior to starting its review of an application, the reviewing authority must determine whether the application is complete for review—i.e.:
  - 1. Accompanied by the proper application fee;
  - 2. Containing sufficient documentation of right, title, or interest; and
  - 3. Containing sufficient information for the reviewing authority to begin its review.

If the application is found incomplete, the reviewing authority must notify the applicant and direct the applicant to submit any omitted or incomplete information within a specified period of time. If the omitted or incomplete information has not been submitted by then, the reviewing authority may return the application as incomplete and conclude its review. If the application is found complete for review, the reviewing authority must begin its full evaluation of the application.
- C. **Written Decision.** The reviewing authority must issue a written decision to approve, approve with conditions, or deny each application permit or approval which is deemed complete for review.
  - 1. **Decision; Time Limits—Subdivision Applications.** The Planning Board must issue a written decision on a subdivision application within 30 days of a public hearing or, if no hearing is held, within 60 days of finding the application complete for review.
- D. **Burden of Proof.** The applicant has the burden of proving, by demonstrable evidence, that a

proposal complies with the requirements of this Ordinance.

E. **Access to and Display of Permits and Approvals.** The permit holder must have a copy of all written permits or approvals on site while the authorized work is performed. Building permits must be displayed conspicuously on or adjacent to the project site, must be clearly visible from the principal traveled road, and must remain displayed until the work is completed.

### **Section I-9 How Must an Applicant Give Notice to Abutting Property Owners?**

Whenever a provision of this Ordinance requires the notification of owners of abutting properties of an application submission, public meeting, public hearing, site visit, or other filing or event, the following requirements apply unless otherwise specified:

A. The applicant must send a notice, in form acceptable to the reviewing authority, to the owners of property located within 100 feet of the boundary of the lot affected by the proposal and to the Code Enforcement Officer. The notice must contain a description of the application and a sketch plan, together with the date, time, and location of any public meeting, public hearing, site visit, or other event (collectively, "Event"). The notice must be sent using certified mail, return receipt requested, at least fourteen days before the date of the Event. For purposes of this Section I-9, the "owners of property" are the persons listed in the most recent version of the *"Town of Stonington Assessing Office Property Owner Lists"* amended periodically, and available at the Town Office.

B. In addition, for subdivision and site plan applications, the Town must send the notice described in subsection A, above, to (i) the municipal clerk and the reviewing authority of any municipalities that abut or include any portion of the subdivision or site plan, and (ii) the public drinking water supplier if the subdivision or site plan is within its source water protection area.

### **Section I-10 Once a Permit or Approval is Given, What Limits Apply?**

A. **Substantial Start.** If the work authorized under a permit or approval is not substantially started within 12 months of the date of issuance of the permit or approval, the permit or approval lapses and becomes void.

B. **Substantial Completion.** A permit or approval expires if the authorized work is not substantially completed within 24 months of the date of issuance of the permit or approval, except that a building permit expires if the authorized work is not substantially completed within 12 months of the date of issuance of the permit.

C. **Conditions of Approval.** The Planning Board may condition its permits and approvals to require authorized work to be phased in or to set a longer or shorter timeframe for the substantial start or the substantial completion of the authorized work if, in the Planning Board's judgment, as the circumstances of a proposal so require.

D. **Extensions.** The reviewing authority may grant up to a 12-month time extension for a lapsed or expired permit or approval upon a showing of good cause by the permit holder. Extensions beyond 12 months require a new permit or approval and must comply with all applicable Ordinance requirements in effect at that time.

E. **Discontinuation of Use.** A permit or approval expires if the use for which the permit or approval was granted is discontinued for 18 or more consecutive months.

F. **Expiration of Permits or Approvals.** Except as provided in this Section I-10, a permit or approval has no expiration date, unless the Planning Board conditions its approval on an expiration date.

### **Section I-11 What Activities Require a Certificate of Occupancy?**

- A. Prior to the sale, lease, or occupancy of any new building, or use of a site that required site plan or subdivision approval, the builder or developer (person who received a valid building permit) shall secure a Certificate of from the Code Enforcement Officer. Prior to issuing any certificates, the Code Enforcement Officer will check to see that all requirements under this Ordinance and other applicable laws have been met. Any person who sells, leases, or occupies a building or uses a site within the Town prior to securing the appropriate certificate(s) by the Code Enforcement Officer is in violation of this Ordinance and is subject to its penalties. The Code Enforcement Officer shall maintain a record of all certificates and copies shall be furnished upon request.
- B. Certificate of Occupancy. This is a document issued by the Code Enforcement Officer allowing the occupancy or use of a structure and certifying that the structure has been constructed or will be used in compliance with the applicable Code and Ordinances. Said Certificate shall be requested by the applicant within 15 days after the erection or alteration have been completed and approved.

### **Section I-12 What is the Process for Requesting Reconsideration or Appealing a Decision?**

- A. **Reconsideration.**
  - 1. The Planning Board may reconsider any decision reached under this Ordinance within 45 days of its prior decision. A request to the Planning Board to reconsider a decision must be filed within 10 days of the decision that is to be reconsidered. A vote to reconsider and the action taken on that reconsideration, if any, must occur and be completed within 45 days of the date of the vote on the original decision. The Planning Board may conduct additional public hearings and receive additional evidence and testimony. Notwithstanding subsection C, below, appeal of a reconsidered decision to the Maine Superior Court must be made within 15 days after the decision on reconsideration. All requests for reconsideration must be accompanied by a fee as provided in the Town's Fee Schedule.
  - 2. The Board of Appeals may reconsider any decision in accordance with the provisions of 30-A M.R.S.A. § 2691(3). All requests for reconsideration must be accompanied by a fee as provided in the Town's Fee Schedule.
- B. **No Right of Administrative Appeal.** Neither the Planning Board nor the Board of Appeals has jurisdiction to hear appeals from any decision or failure to act of a reviewing authority or municipal official in the administration or enforcement of this Ordinance, including from any notices of violation, enforcement orders, suspensions or revocations of permits or approvals, written determinations of no violation, or any other enforcement decisions, which are advisory only.
- C. **Appeal to Superior Court.** Any aggrieved person may appeal a decision of the reviewing authority directly to the Maine Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

## Section I-13 What is the Process for Seeking Waivers?

Upon written request from an applicant, the reviewing authority may grant the following waivers.

A. **Submission Requirements.** The reviewing authority may waive any of the submission requirements contained in this Ordinance if it finds that:

1. Due to special circumstances of the application, the information is not necessary for it to determine compliance with the standards governing its review of the application; and
2. Granting a waiver would not adversely affect abutting properties or the general health, safety, and welfare of the residents of the Town and would be consistent with federal and state law.

B. **Site Plan Review.** The Planning Board may modify or waive any of the review criteria contained in Chapter III (Site Plan Review) if it finds that:

1. Due to special circumstances of the site or the proposals, the standards are not applicable or would be an unnecessary burden upon the applicant; and
2. Granting a waiver would not adversely affect abutting properties or the general health, safety, and welfare of the residents of the Town. In granting a waiver, the Planning Board may impose conditions that will substantially secure the objectives of the requirements that have been waived.

C. **Subdivisions.** The Planning Board may modify or waive any of the review criteria contained in Chapter IV (Subdivision Review) if it finds that:

1. Due to special circumstances of the site or the proposals, the standards are not applicable or would be an unnecessary burden upon the applicant; and
2. Granting a waiver would not adversely affect abutting properties or the general health, safety, and welfare of the residents of the Town. In granting a waiver, the Planning Board may impose conditions that will substantially secure the objectives of the requirements that have been waived.

D. **Finding of Facts.** Where the reviewing authority makes written findings of fact that due to special circumstances of a particular project submittal, the provision of certain required improvements is not requisite to provide for the public health, safety or welfare, or is inappropriate because of inadequate or lacking connecting facilities adjacent to or in proximity of the proposed subdivision, it may waive the requirement for such improvements, subject to finding:

1. The applicant has provided the reviewing authority with a factual basis for granting the waiver that is supported by sound engineering and/or environmental analysis (cost considerations are not justification); and
2. The waiver(s) do not have the effect of nullifying the intent and purpose of this Ordinance; or
3. The performance standards of these regulations have been substantially met and the criteria of this Ordinance have been or will be met by the proposed

project; and, appropriate conditions provide that the waivers do not have the effect of nullifying the intent and purpose of these regulations.

E. **Waivers to be Shown on Final Plan.** When the reviewing authority grants a waiver to any of the provisions required by these regulations, the Final Plan, shall indicate the waivers granted and the date on which they were granted.

#### **Section I-14 What Fees Must Accompany an Application for a Permit or Approval?**

A. **Fee Schedule.** The Selectboard must establish a schedule of fees which bears a substantial relationship to the cost of processing, reviewing, and administering applications. The fee schedule may be amended from time to time by order of the Selectboard as it deems necessary, fair, and reasonable. For administrative ease, the fee schedule may also identify Town-imposed fees, costs, rents, assessments, fines, and penalties other than those associated with the processing, review, and administration of applications to which this Ordinance does not apply.

B. **Special Fee.**

1. If the reviewing authority determines that an application, by virtue of its size, uniqueness, complexity, or other factors, is likely to require a disproportionate share of Town resources to process, review, or administer, the reviewing authority may designate the application as a "special application" and may assess a special fee in addition to any applicable fees established by the fee schedule in subsection A, above, or any other ordinance or law. The reviewing authority may designate an application as a special application at any time during the processing of the application. The designation by the reviewing authority of an application as a special application is final.
2. The special fee may not exceed the actual costs associated with processing, reviewing, and administering the special application. The special fee may include the actual fees and costs of:
  - a) Town personnel time, administration, supplies, advertising, legal notices, mailings, postage, or photocopies and other document reproductions;
  - b) Administering Town meetings, referenda, public hearings, public information sessions, or workshops;
  - c) Specialized computer software or technical support necessary or advisable to process, review and administer the special application;
  - d) In-house or third-party attorneys' fees;
  - e) In-house or third-party professional reviews of the special application or the record related thereto, or other expert or consulting fees, including the costs of services of state or federal reviewing agencies, professional consultants, planners, visual impact experts, traffic impact experts, and economic development and finance consultants.
3. The reviewing authority must notify the applicant in writing of the special application designation and provide the applicant with an estimate of the

special fee. The applicant must pay to the Town the estimated special fee within 14 days of receipt of the notification; otherwise, the special application must be returned as incomplete. If the estimated special fee is depleted prior to the completion of processing, reviewing, and administering the special application, the reviewing authority may provide the applicant with a revised estimate of the special fee from time to time, and the applicant must pay to the Town the revised estimate, less any prior estimate already paid, within 14 days of receipt of the notification.

4. The Town must deposit the special fee into an escrow account and may draw on the account to pay for the actual costs associated with processing the special application.
5. After the reviewing authority renders its final decision on the special application, the Town must provide the applicant with an accounting of the actual costs of processing the special application and must return any unspent portion of the special fee to the applicant within 60 days.

C. **Refunds; Waivers.** The Selectboard, in its sole discretion, may refund, reduce, or waive any fee or special fee assessed under this Section I-14 when the person requesting the refund, reduction, or waiver demonstrates to the satisfaction of the Selectboard that an extreme hardship or injustice would result from payment of the fee.

## **Chapter II: Building Permits & Building Regulation**

### **Section II-1    Applicability: Building Permit Required**

A. Building Permit Required. Except as provided in subsection B, below, prior to starting any construction, replacement, demolition, remodeling, relocating, expansion, or plumbing (such as internal, external, or subsurface wastewater disposal) of any building, structure, or parts of a building or structure, the property owner must obtain a building permit from the Code Enforcement Officer.

B. Exception. No person shall erect, construct, enlarge, alter, move or demolish any building or structure without first obtaining a building permit from the CEO, except for those activities which are exempted by this Ordinance or state law. Only buildings and structures that are less than 100 sq. ft. and not meant for human habitation are exempt from a building permit.

### **Section II-2    Review Standards**

A. Before issuing a building permit, the Code Enforcement Officer must find that:

1. The size of the lot meets State requirements;
2. The setback from the road meets State requirements (10');
3. All construction must be at least ten feet (10') from the nearest lot line; except that any existing structure which is located within ten feet (10') of a lot line and which is removed, damaged or destroyed by more than 50% of the market value before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within one year of the date of said damage, destruction or removal. In no case shall a structure be reconstructed or replaced so as to be nearer the lot line. If the structure is in the Commercial Fisheries/Maritime District it is exempt from the 10-foot lot line setback

requirement;

4. Driveways and parking spaces for single-family residential structures are exempt from the 10-foot lot line setback requirement;
5. If off-street municipal parking is available for existing buildings converting upper floors or rear units into year-round housing units within Main Street the use is exempt from providing off-street parking;
6. The soil shall be suitable for the proposed use and be in accordance to State soil criteria;
7. The proposed project shall not cause soil erosion and shall not increase the rate of stormwater runoff beyond the property boundaries over the predevelopment rate;
8. The proposed project shall not have a significant adverse impact on archaeological resources or historic buildings as identified in the Comprehensive Plan. The CEO has the right to require an archaeological or historic survey if deemed necessary, based on a recommendation from the Maine Historic Preservation Commission;
9. The cutting of trees shall conform to State standards;
10. The size of any sign shall not exceed 3' x 4'; and
11. The proposed construction shall not obviously cut off a neighbor's view;
12. One year-round Accessory Dwelling Unit (ADU) is allowed per primary dwelling unit if it is not rented for fewer than 90 days and conforms with State plumbing or Sanitary District regulations;
13. Proposed construction shall not exceed 35 feet in height for any building or structure unless otherwise allowed by this Ordinance;
14. All development wholly or partially within the shoreland zone, must comply with the Town's Shoreland Zoning Ordinance.

### **Section II-3 Three- and Four-Unit Residential Structures, Minor Site Review**

- A. **Submission Requirements.** In addition to the submission requirements described in Section I-7, applications for building permits for structures containing three or four dwelling units must provide all information required for a Subdivision Review in Chapter IV.
- B. **Abutter Notice Period.** When an applicant turns in application materials for review, they must send notice to all abutters following the steps outlined in Section I-9 of this Ordinance. This notice shall provide a brief description of the proposed project, the physical location, and announce a 10-day public comment period. The public comment period will commence upon the mailing of said notices to the address of record as referenced in Section I-9. Proof of this

mailing will be provided to the Code Enforcement Officer as soon as possible after the mailings have been sent. At the end of the public comment period, the Code Enforcement Officer will review the public comments and the application.

C. **Review Standards.** The Code Enforcement Officer shall review the same standards as outlined in Section II-2 and Chapter IV of this Ordinance. Once the Code Enforcement Officer has reviewed for compliance with these standards, a building permit may be issued.

1. All new proposed dwelling units are required to include 10% of such units be made available as affordable housing as defined in Section VI-2.

#### **Section II-4 Inspections and Compliance**

The CEO may inspect work at any stage and require corrections. Non-compliance may result in revocation of the permit and penalties as provided by law.

### **Chapter III: Site Plan Review (Commercial/ Multi-Unit Residential)**

#### **Section III-1 Applicability**

This review applies to all:

1. The construction, conversion, or expansion of a multi-family residential building containing five or more dwelling units.
2. The construction or placement of any new building or structure for a non-residential use, or the expansion or conversion of an existing building for a non-residential use, including accessory buildings and structures, if such buildings or structures have a total area for all floors of 5,000 square feet or more.
3. The conversion of an existing non-residential use, in whole or in part, to another non-residential use if the new use changes the basic nature of the existing use such that it increases the intensity of on- or off-site impacts of the use subject to the standards and criteria of site plan review described in this Ordinance.
4. The conversion of an existing non-residential use on Main Street, in whole or in part, to a residential use. Residential uses are disallowed on street level floors. The existing commercial/retail use must remain one of the following street-facing, pedestrian oriented uses: retail sales, cafes/restaurants, personal services, real estate offices, health/exercise services, museums, or art galleries. A waiver may be granted to the residential location requirement if an applicant can provide sufficient evidence of undue hardship to their person, being unable to utilize the upper floors for residential use.
5. The development of three or four dwelling units on a tract of land, involving dwelling units in more than one structure.

## Section III-2 Review Procedures

### A. Pre-Application Meeting—Sketch Plan (Optional).

1. Before submitting a site plan application, the applicant may (but is not required to) appear at a regular or special meeting of the Planning Board to informally discuss the proposal. The pre-application meeting is informal and informational in nature, and the purposes of the pre-application meeting are to:
  - a) Allow the Planning Board to understand the nature of the proposal;
  - b) Allow the applicant to understand the review process and required submissions; and
  - c) Identify issues that need to be addressed in future submissions.
2. The applicant must give notice of the pre-application meeting in accordance with Section I-9.
3. The applicant may present to the Planning Board at the pre-application meeting, for informal review and comment, a sketch plan of the proposed development. The sketch plan consists of a rough description of the proposed development, and may be a free-hand, penciled sketch of the subject property showing the proposed exterior and layout of structures, roads, and other existing and proposed features relevant to site plan or conditional use review. The applicant may identify and discuss any requests for waivers pursuant to Section I-13.
4. The Planning Board may request that the applicant arrange for a site visit with the Planning Board and the public. The applicant must give notice of the site visit in accordance with Section I-9.
5. No binding commitments may be made between the applicant and the Planning Board at this stage. No vested interests will attach or accrue as a result of any pre-application meeting, and such meeting will not cause an application to be deemed complete for review pursuant to Section I-8.B.

### B. Preliminary Plan Completeness Review

1. **Application Submission.** The applicant must submit a site plan application. The applicant must give notice of the application submission in accordance with Section I-9. The Planning Board must determine whether the application is complete for review pursuant to Section I-8.B.
2. **Impact Statements.** At any time after receiving an application, the Planning Board may solicit impact statements from the Select Board or any municipal officials. The officers or officials must submit their impact statements to the Planning Board within five days of the solicitation.

### C. Final Plan Review.

After finding an application complete for review, the Planning Board must hold a public hearing on any site plan application and the Town must publish the

time, date, and place of the hearing at least 12 days prior to the hearing in a newspaper of area-wide circulation, and the applicant must give notice of the hearing in accordance with Section I-9.

D. **Site Visits.** At any time during its review of a site plan application, the Planning Board may request that the applicant arrange for a site visit with the Planning Board and the public. The applicant must give notice of the site visit in accordance with Section I-9.

E. **Supplemental Information; Proposed Modifications by Applicant**

1. Typically, no supplemental application materials shall be accepted by the Code Enforcement Officer after the posted submission deadline. However, the Code Enforcement Officer shall have the ability to determine the reasonable acceptance of limited application material after the deadline date if an application is determined to be mostly complete and only minor additions to the project submittal are required.
2. Supplemental application materials shall NOT be accepted by the Code Enforcement Officer once projects have been distributed to the Planning Board for review. At this point, if an applicant has additional information to be reviewed by the Planning Board, the applicant must bring ten copies of the information to the meeting and allow the Planning Board to review the relevant material. If the Planning Board determines the information can be reasonably reviewed and understood by the Board and any interested members of the public without causing a substantial delay to the meeting, the Board may vote to accept the additional information. If the Board denies the request to accept additional information, the project shall be reviewed as if the information is missing.
3. At any time during its review of a site plan application, the Planning Board may request additional information from the applicant and establish the due date for submitting such information. If the information is not submitted by the applicant by the due date, the application may be returned as incomplete.

F. **Written Decision.** The Planning Board must issue a written decision in accordance with Section I-8.C.

### **Section III-3 Application Submission Requirements**

A. **Copies.** The applicant must submit ten paper copies and one electronic PDF of the application and any supporting documents or evidence.

B. **Application Submission Requirements.** In addition to the application submission requirements in Section I-7, the applicant must submit the following materials unless waived by the Planning Board in accordance with Section I-13:

1. A site plan or plans prepared at a scale of not less than one inch to 100 feet on paper size no smaller than 24 x 36 inches containing:
  - a) The name and address of the applicant, the name of proposed development, and the name and address of the property owner, if different.
  - b) The date the plan was prepared with the name, address, and contact information of the person who prepared the plan.

- c) Any land within 500 feet of the proposed development area in which the applicant has right, title, or interest.
- d) A soil survey (including a soils map, location of soil test pits, soil narrative report, and soil profile log description) of existing soil conditions, conducted by a professional consultant according to the *Guidelines for Maine Certified Soil Scientists for Soil Identification and Mapping* (Maine Association of Professional Soil Scientists, Mar. 2009). The intensity level of the soil survey within the buildable area must be:
  - i) Class A (high intensity) for proposed structures and uses on a lot less than two acres with on-site subsurface wastewater disposal.
  - ii) Class C (medium-high intensity) for structures and uses on a lot two acres or greater with on-site subsurface wastewater disposal.
  - iii) Class D (medium intensity) for all other proposals and for all areas outside of the buildable area.
- e) Topographic contours at elevation intervals of two or five, or as otherwise specified by the Planning Board.
- f) Municipal tax map and lot numbers and names of property owners within 100 feet of the property lines of the proposed development area.
- g) A perimeter survey of the parcels encompassing the proposed development area and interior lot layout, giving complete descriptive data by bearings and distance, made and certified by a land surveyor relating to reference points, showing true north point, graphic scale, corners of parcels, date of survey, lot size, road frontage, lot coverage, any contiguous private open space, minimum setback lines, and total acreage.
- h) Existing and proposed locations and dimensions of any essential services, utility lines, sewer lines, water lines, easements, drainage ways (including all existing and proposed storm drainage facilities and dimensions of culverts and pipes), roads, and public or private rights-of-way.
- i) An on-site soils investigation report by a licensed site evaluator or engineer. The report must contain the types of soil, location of test pits, and proposed location and design of the subsurface wastewater disposal system for the proposed development. If an engineered system is proposed to serve the development, the system must be designed by an engineer and approvals of such system design from the DHHS must be submitted.
- j) The location and dimensions of on-site pedestrian and vehicular access ways, parking areas, loading and unloading facilities, design of entrances and exits of vehicles to and

from the site onto public roads, and curb and sidewalk lines.

- k) The location of all land use and shoreland zoning subdistrict boundaries.
- l) The location of mapped aquifers and aquifer recharge areas.
- m) The location of floodplains and floodplain elevations.

2. Drawings and descriptions showing:

- a) The exterior of existing and proposed structures, including additions and expansions, identifying structure height, exterior materials, texture, and color.
- b) A floor plan of existing and proposed structures showing location, footprint, floor area, ground coverage, and placement on site.
- c) A landscaping plan showing approximate placement and types of existing and proposed vegetation, berms, hedges, tree lines, fencing, and screening.
- d) The location, description, and placement of signs.
- e) The location, description (including intensity, type, size, and direction), and placement of exterior lighting.

3. A written statement consisting of:

- a) A description of the existing and proposed uses of the site, and any existing or proposed structures, including quantity and type of dwelling units, if any.
- b) The floor area and footprint of each existing and proposed structure, and the lot coverage by each structure, each impervious surface, and all structures and impervious surfaces in the aggregate.
- c) Information relating to projected numbers and types of clients, staff, and duties in sufficient detail to allow the Planning Board to evaluate the availability of municipal services.
- d) A summary of existing and proposed easements, restrictions, and covenants placed or to be placed on the development area.
- e) A description of the proposed method of solid waste disposal.
- f) A soil erosion and sedimentation control plan prepared in accordance with the *Maine Erosion and Sediment Control Best Management Practices (BMPs): Manual for Designers*

*and Engineers (DEP, Oct. 2016).*

- g) An evaluation of the availability and suitability of off-site public facilities that will serve the proposed development.
- h) A proposed plan for fire protection services, including an evaluation of the availability and suitability of fire hydrants, fire ponds, and other fire protection services, consistent with the applicable provisions of NFPA.
- i) A statement that any proposed road construction will comply with all applicable ordinances, rules, and regulations of the Town.
- j) A construction schedule identifying all major stages of construction and including an estimate of the date when construction will start and be substantially completed.
- k) A plan for protecting existing vegetation during construction and replacing vegetation that may become damaged by construction.
- l) A long-term operations and maintenance plan providing for ongoing monitoring and inspections of all site infrastructure. The plan must provide a method for maintaining sufficient financial and technical resources for performing ongoing maintenance and repair of all proposed structures and uses.
- m) A decommissioning plan prepared by an engineer containing, at minimum, a proposed decommissioning schedule and statements and plans addressing physical removal of all facilities and structures; disposal of all solid and hazardous waste in accordance with applicable laws and rules; stabilization or revegetation of the site to minimize erosion and return the site to substantially its pre-development state; and an estimate of costs for decommissioning (including methodology and data supporting the estimate).

#### **Section III-4 General Review Criteria**

- A. For structures and uses that are allowed with site plan approval, the proposal must comply with the following review criteria:
  1. **Compliance with Other Regulations and Plans.** The proposal complies with all applicable requirements of this Ordinance and the Town's ordinances, rules, and regulations and the proposal is consistent with the Comprehensive Plan.
  2. **Adequate Technical and Financial Capacity.** The applicant must have adequate technical and financial capacity to develop, operate, and (as applicable) decommission the project in compliance with all applicable review standards, including the general review criteria in this Section III-4. Evidence of adequate technical capacity may include a written statement identifying the consultants and contractors involved in designing and constructing the

project, as well as the long-term operators or managers of the project, and their respective expertise and experience with comparable projects. Evidence of adequate financial capacity may include a written statement from the lender or financing partner identifying the estimated project cost and confirming that the developer has funds to cover the cost.

3. **Water Supply.** Sufficient water must be available for the reasonably foreseeable needs of the proposed development, and the proposal must not cause an unreasonable burden on any existing water supplies.
  - a) If the proposal is served by the Stonington Water Company or if the project uses a well within 1,000 ft. of the Water Supply Protection District, the proposal must show it will not create a burden on the Stonington Water Company's water supply. No project served by the Stonington Water Company will have an estimated daily average consumption in excess of 1,000 gallons.
4. **Sewage Disposal.** The proposal must provide for adequate sewage disposal by demonstrating compliance with all applicable provisions of the state wastewater disposal rules.
  - a) If an engineered subsurface wastewater disposal system is proposed to serve the development, or if individual subsurface wastewater disposal systems are proposed to be installed, approvals of such system designs must be secured from the LPI and, as applicable, the DHHS.
  - b) If served by the Stonington Sanitary district, the proposal will not unduly burden the District's Capacity.
5. **Exterior Lighting.** All exterior lighting, including lighted signs and other lighted advertising structures or features, must be shielded and non-flashing, and must be located and designed to (i) ensure safe movement of people and vehicles; (ii) avoid glare and reflection on adjacent properties and roads; and (iii) not impair the vision of the driver of any vehicle upon any road. Lighting shall be pointed downward unless shown to be impractical for the use.
6. **Road Access.** The proposed development must adjoin a public or private road or have deeded access to a public or private road.
7. **Vehicular and Pedestrian Traffic.** The proposal must not cause vehicular and pedestrian traffic conditions to become unsafe or to exceed reasonable traffic limits of any affected roadways. In evaluating this standard, the Planning Board may consider the location, number and control of access points, adequacy of adjacent roads, traffic flow, traffic volume, sight distances, turning lanes, existing or proposed traffic signalization, and pedestrian-vehicular contacts. When practicable, applicants must incorporate shared driveways to

provide common access to adjacent properties and reduce curb cuts on the main road.

## 8. Internal Traffic Circulation and Road Design.

- a) The design of interior walkways, crosswalks, drives, and parking areas must promote safe, clearly delineated, and convenient traffic patterns for pedestrian, vehicular, and service use. The proposed layout must also provide adequate turning capacity for public safety vehicles.
- b) All public and private roads in a development area and all new roads serving the proposed development must comply with the road design and construction standards in this Ordinance.

## 9. Parking.

- a) The proposal must provide adequate off-street parking to accommodate the projected needs of the proposal, including projected numbers of employees and customers. Unless the Planning Board finds that fewer parking spaces may adequately accommodate the projected needs of the proposal, the following minimum parking spaces are required:

<b>Proposed Use</b>	<b>Minimum Number of Parking Spaces</b>
<u>Residential structures and uses</u> (including affordable housing development, assisted living facility, multi-family dwelling, group home, mobile home park)	2 spaces per 3 units in an affordable housing development; otherwise, 1 space per dwelling unit
<u>Transient accommodations</u> (including bed and breakfast / small inn, boarding house, hospice facility, hotel / motel / large inn, resort)	1 space per guest room or accommodation
<u>Gathering spaces</u> (including auction / auction house, bar / tavern / cocktail lounge, brewery / distillery / winery, community center, farmers market, food truck park, function hall / lodge / clubhouse, funeral home, live theater / music / entertainment, midway / fairground, movie theater, outdoor flea market / open-air market, indoor recreation, outdoor recreation, religious assembly, restaurant)	1 space per 4 seats or per 4 projected daily patrons and staff if there is limited seating.

<u>Retail sales and services</u> (including animal shelter, auto / boat sales, service, and storage, auto washing facility, bank, boarding kennel, building materials yard, electric vehicle charging station, equipment rental service, fuel retail sales, garden materials yard, gas station, general contractor yard, health institution, hospice facility, laundromat, liquor store, marijuana small-scale caregiver operation, minimart, neighborhood convenience store, office building, pawn shop, retail business, self-storage facility, vehicle and small engine repair shop, veterinary service)	1 space per 300 sq. ft. floor area
<u>Industrial, utility, or resource extractive uses</u> (including, but not limited to, piggery agriculture, poultry agriculture, industrial-scale agriculture product processing, aquaculture, communication tower, essential service, firewood processing and sales, manufacturing, mineral extraction, sawmill, solar energy facility, warehousing and distribution, water extraction)	As determined by the Planning Board
<u>Other</u> (including, but not limited to, ambulance / fire station, boat launching facility, campground, children's summer camp, day care facility, education facility, equestrian facility, governmental use, marina, redemption / recycling / transfer facility, research facility)	As determined by the Planning Board

- b) Applicants may satisfy the parking requirement in subsection 9.a, above, by (i) demonstrating that existing public or private parking areas accommodate projected needs of the proposed development; (ii) entering into a written lease or other legally binding agreement, having a minimum duration of 10 years, with another property owner or with the Town to use, exclusively or on a shared basis, public or private parking lots that are within .25 miles to the development site and allow overnight and winter parking; or (iii) proposing an alternative agreement or arrangement sufficient to address the parking needs of the proposed development.
- c) Parking lots serving multiple establishments or providing general off-street parking are encouraged.

**10. Emergency Vehicle Access.** Provision must be made for convenient and safe emergency vehicle access to the proposed development site, including to all existing and proposed structures.

**11. Municipal and Public Services.** The proposal must not have an unreasonable adverse impact on municipal and other public services and facilities, including municipal road systems (including road maintenance and snow removal), public utilities, fire protection,

police services, emergency medical unit services, solid waste disposal services, schools, public open spaces, recreational programs and facilities, on-site and off-site drainage facilities, and other municipal and public services and facilities.

12. **Surface Water Drainage.** Adequate provision must be made for surface water drainage so that removal of surface waters will not adversely affect neighboring properties, downstream water quality, soil erosion, or any public or private storm drainage systems. Whenever practicable or necessary, on-site absorption must be utilized to minimize off-site discharge.
13. **Erosion and Sedimentation Control.** The proposal must not, alone or in conjunction with existing activities, cause unreasonable soil erosion or a dangerous or unhealthy reduction in the capacity of the land to hold water. Any filling, grading, dredging, lagooning, earthmoving, or other land disturbance activities must be conducted in such a manner to prevent soil erosion and sedimentation into surface waters.
14. **Water Quality and Quantity.** The proposal must not, alone or in conjunction with existing structures and uses, have an unreasonable adverse impact on surface water or groundwater quality or quantity. In making this determination, the Planning Board must consider:
  - a) The nature of soils and subsoils, including their ability to adequately support subsurface wastewater disposal systems or any other approved or licensed discharge;
  - b) The slope of the land and its effect on effluents;
  - c) The impact of the proposed development on aquifers and aquifer recharge areas;
  - d) The existence of streams and surface runoff characteristics;
  - e) The cumulative impact of increased phosphorus export to water bodies; and
  - f) Any applicable federal, state, and local laws and rules, and approvals granted, pertaining to water quality and quantity.
15. **Air Pollution.** The proposal must not, alone or in conjunction with existing activities, have an unreasonable adverse impact on air quality. The applicant must consult federal and state authorities, including DEP, to determine applicable air quality laws and regulations and must furnish evidence to the Planning Board of compliance with such laws and regulations.
16. **Preservation and Enhancement of the Landscape.** During construction, the landscape must be preserved in its natural state to the greatest extent possible by minimizing tree removal, minimizing disturbance of soil, and retaining natural vegetation to minimize the impacts of the proposal on neighboring land uses. A landscaping plan must be incorporated into the final site plan, and vegetation must be retained or landscaping must be designed and planted to:
  - a) substantially screen from view activities and structures (including off-street parking

areas) from public roads and abutting properties, and

b) minimize adverse visual and noise impacts on neighboring land uses. Invasive plants may not be used in any landscaping plan.

17. **Visual Impact.** The proposal must not, alone or in conjunction with existing structures and uses, have an unreasonable adverse effect on the scenic or natural beauty of the Town, including its aesthetics, historic sites, and rare and irreplaceable natural areas.

18. **Historic and Archaeological Resources.** The proposed development must have no unreasonable adverse impact on historic and archaeological resources, including any historic district, site, or structure that is currently listed on or eligible for listing on the National Register of Historic Places or in the most recent Comprehensive Plan. If required by the Planning Board, the applicant must consult with Maine Historic Preservation Commission (MHPC) to determine the existence of and impacts to any protected historic or archaeological resources by the proposed development. Comments submitted by MHPC must be provided to the Planning Board.

19. **Protected Natural Resources.** The proposed development must have no unreasonable adverse impact on protected natural resources. If required by the Planning Board, the applicant must consult with MDIFW to determine the existence of and impacts to any protected natural resources by the proposed development. Comments submitted by MDIFW must be provided to the Planning Board. The Planning Board may, in its discretion, rely on approvals of the proposed development by state and federal governmental entities, including the DEP and U.S. Army Corps of Engineers, as *prima facie* evidence that the proposed development will have no unreasonable impact on protected natural resources.

20. **Signs and Advertising Features.** The size, location, design, lighting and materials of all exterior signs and outdoor advertising structures or features shall not detract from the design of proposed buildings and structures and the surrounding properties. If a project is within the shoreland zone, signage must comply with the Town's Shoreland Zoning Ordinance.

21. **No Nuisance.** Any non-residential use which is found by the Planning Board to constitute a public nuisance by reason of the emission of dust, fumes, gas, smoke, odor, noise, vibration, or other disturbance is prohibited.

22. **Lot Standards.** For lots that do not have frontage on Main Street:

- The maximum lot coverage for buildings is 50 percent.
- The minimum setbacks are:

- i) Front yard: 25 feet from edge of right-of-way.
- ii) Side yard: 20 feet from property line.
- iii) Rear yard: 20 feet from property line.
- iv) Shoreland: As per Shoreland Zoning Ordinance.

**23. Performance Guarantee.** If required by the Planning Board, in its discretion, the applicant must provide for a performance guarantee to the Town in accordance with any decommissioning plan and Section VI-8.

**24. Street Design and Construction.** All roads and accessways must meet the standards laid out in Chapter V, Section V.I.B.

**25. Affordable Housing.** All new proposed dwelling units are required to include 10% of such units be made available as affordable housing as defined in Section V

### **Section III-5 Post-Approval Requirements**

- A. Incorporation of Approved Plan.** All construction activities must comply with the approved site plan approval and any conditions of approval and incidental changes made pursuant to Section V-8.B.
- B. Performance Guarantee.** The Planning Board may require the filing of a performance guarantee for any approved site plan in accordance with Section VI-8.
- C. As-Built Drawings.** Any project involving the construction of more than 20,000 square feet of total floor area or 50,000 square feet of impervious surface must submit to the Code Enforcement Officer, within 30 days after occupancy or commercial operation, a set of construction plans showing the structures, facilities, and site infrastructure as actually constructed on the site.

### **Section III-6 Amendments to Approved Site Plans**

- A.** Prior to making any change or revision to a site plan approval that has been approved by the Planning Board, the applicant must submit a site plan approval amendment application to the Planning Board. Except as provided in subsection B, below, the amendment application is subject to the same review procedures, application submission requirements, review standards, and other provisions of this Ordinance as apply to a site plan application.
- B.** The following incidental changes or revisions to approved site plans may be approved by the Planning Board without conducting a public hearing, if in the judgment of the Planning Board such changes or revisions will not alter any of the Planning Board's prior determinations with respect to any applicable review criteria or alter the essential nature of the approved site plan:
  1. Stripping, grading, grubbing, filling, or excavation of less than 1,000 square feet of land.
  2. Immaterial corrections to locations of property boundary lines, setback lines, rights-of-way, easements, existing natural features, and existing or proposed structures.

3. Typographical, clerical, or scrivener's errors.

Any such changes or revisions must be endorsed in writing on the approved plan by a majority of the Planning Board.

## Chapter IV: Subdivision Regulations

### Section IV-1 Applicability

The provisions of this Ordinance shall pertain to all land proposed for subdivision as defined in Title 30-A, M.R.S. § 4401 *et. seq.*, as amended. A lot of 40 or more acres shall be counted as a subdivision lot for the purposes of this Ordinance.

### Section IV-2 Level of Review by Project Type

- A. **Minor Land Subdivision Plan Review.** This level of review shall include projects that involve the division of land ONLY and creates four or fewer lots in a way that triggers subdivision review per this Ordinance.
- B. **Major Land Subdivision Plan Review.** This level of review shall include projects that involve the division of land ONLY and creates five or more lots in a way that triggers subdivision review per this Ordinance.
- C. **Major Structure Subdivision Plan Review.** Structure subdivisions of 5 or more dwelling units shall be reviewed under Chapter III (Site Plan Review).
- D. **Simultaneous Subdivision of Land and Structures Plan Review.** This level of review shall include all projects that divide both land and structures, regardless of how many lots or dwelling units are created as part of the subdivision process, and that triggers subdivision review per the provisions of this Ordinance.
- E. Each of the above project types must have a Preliminary and Final plan review by the Planning Board. Sketch Plan reviews are optional, but strongly encouraged.
- F. **Revisions to Previously Approved Subdivision Plans.** This level of review shall apply to any revisions or amendments made to a subdivision plan previously approved by the Board. A revision that does not increase the number of lots or dwelling units shall only require a Final Plan review. Revisions that increase the number of lots or dwelling units shall follow permitting procedures as though the entirety of the project were a new application, beginning with Preliminary Plan Review.

### Section IV-3 Review Procedures

#### A. Pre-Application- Sketch Plan Meeting (Optional).

1. Before submitting a subdivision application, the applicant may appear at a regular or special meeting of the Planning Board to informally discuss the proposed subdivision. The pre-application meeting is informal and informational in nature, and the purposes of the pre-application meeting are to:

- (i) Allow the Planning Board to understand the nature of the proposed subdivision,
- (ii) Allow the applicant to understand the review process and required submissions, and
- (iii) Identify issues that need to be addressed in future submissions.

2. The applicant must give notice of the pre-application meeting in accordance with Section I-9.
3. The applicant may present to the Planning Board at the pre-application meeting, for informal review and comment, a sketch plan and other data relevant to the proposed subdivision which may be of assistance to the Planning Board in discussing the proposal. The sketch plan consists of a rough description of the proposed subdivision and its general intent, a description of the site (including its area, shape and existing natural and man-made features), and a free-hand penciled sketch of the subject property showing the proposed layout of lots, roads, dwelling units, and other existing and proposed features relevant to subdivision review. The applicant may identify and discuss any requests for waivers pursuant to Section I-13.
4. The Planning Board may request that the applicant arrange for a site visit with the Planning Board and the public. The applicant must give notice of the site visit in accordance with Section I-9.
5. No binding commitments may be made between the applicant and the Planning Board at this stage. No vested interests will attach or accrue as a result of any pre-application meeting, and such meeting will not cause an application to be deemed complete for review pursuant to Section I-8.

#### **B. Preliminary Subdivision Plan.**

1. Preliminary Subdivision Plan Submission; Completeness Review. The applicant must submit ten paper copies of the preliminary subdivision plan application and one digital PDF version. The Planning Board must determine whether the application is complete for review in accordance with Section I-8.B.
2. Impact Statements. At any time after receiving a preliminary subdivision plan application, the Planning Board may solicit impact statements from the Select Board or any municipal officials. The officers or officials must submit their initial impact statements to the Planning Board within five days of the solicitation.
3. Public Hearing. The Planning Board may hold a public hearing on the preliminary subdivision plan in accordance with subsection D, below.
4. Written Decision. The Planning Board must issue a written decision on the preliminary subdivision plan in accordance with Section I-8.C.

#### **C. Final Subdivision Plan.**

1. Filing Deadline. The applicant must, within six months after the approval of the preliminary subdivision plan, file with the Planning Board ten paper copies of the final application and one digital PDF version for approval of the final subdivision plan, except that the Planning Board may extend the six-month filing deadline upon written request and for good cause shown. If the final subdivision plan is not submitted to the Planning Board within the filing

deadline, as may be extended, the Planning Board may, in its discretion, refuse to act and may require the applicant to resubmit the preliminary subdivision plan.

2. **DEP Approval.** DEP approval of the subdivision must be secured in writing before submission of the final subdivision plan if the proposed subdivision:
  - a) Occupies more than 20 acres of land area and is not exempt from the Site Location of Developmental Act, 38 M.R.S.A. §§ 481 *et seq.*;
  - b) Involves a structure or structures occupying a ground area in excess of three acres;
  - c) Requires a DEP permit or license under some other applicable state law or rule, such as waste discharge or air quality; or
  - d) In any way falls within the jurisdiction of and is subject to DEP review.
3. **Final Subdivision Plan Submission; Completeness Review.** The applicant must submit a final subdivision plan application. The Planning Board must determine whether the application is complete for review in accordance with Section I-8.B.
4. **Public Hearing.** The Planning Board may hold a public hearing on the final subdivision plan in accordance with subsection D, below.
5. **Written Decision.** The Planning Board must issue a written decision on the preliminary subdivision plan in accordance with Section I-8.C.
6. **Recording.**
  - a) After a final subdivision plan is approved, the Planning Board must return one signed paper plan sheet (24 x 36 inches in size) to the permit holder and one signed paper plan sheet must be retained by the Town in the subdivision plan file.
  - b) The permit holder must submit a reduced copy of the final subdivision plan that replicates the division of the parcel as it will be reflected on the Town's tax maps.
  - c) The final subdivision plan must be recorded by the applicant in the Hancock County Registry of Deeds. Any final subdivision plan not so recorded within 90 days of the date upon which the final subdivision plan is approved is null and void, unless the Planning Board finds upon written request of the applicant that there is good cause for an extension which may not exceed 120 days. The applicant must provide the Code Enforcement Officer or their designee with a receipt from the Hancock County Registry of Deeds within that time limit stating that the final subdivision plan has been recorded and giving the book and page numbers.
7. **Building Permits.** No building permits associated with an approved final subdivision plan will be issued until the final subdivision plan has been recorded in accordance with subsection C.6.(c), above, and the permit holder has filed a letter with the Town Clerk stating that all required permanent monuments have been installed.

**D. Meeting or Hearing.** After finding a preliminary subdivision plan application complete for review, the Planning Board may schedule a public hearing upon receipt of the applicant's Final Plan application submission based on the schedule of Planning Board deadlines produced by the Town.

**E. Site Visits.** Site Visits give the Board the opportunity to see the physical location of a proposed subdivision and inspect aspects of a subdivision application. Site Visits can be scheduled any time

during the plan review process prior to the Final Plan Review. Prior to the site visit and upon request of the Board, the applicant shall place “flagging” at the centerline of any proposed roads, at the approximate intersections of the road center and lot corners, as well as at the location of other important proposed structures and features as may be requested by the Board. The applicant must give notice of the site visit in accordance with Section I-9.

**F. Supplemental Information; Proposed Modifications by Applicant.**

1. Typically, no supplemental application materials shall be accepted by the Code Enforcement Officer after the posted submission deadline. However, the Code Enforcement Officer shall have the ability to determine the reasonable acceptance of limited application material after the deadline date if an application is determined to be mostly complete and only minor additions to the project submittal are required.
2. Supplemental application materials shall NOT be accepted by the Code Enforcement Officer once projects have been distributed to the Planning Board for review. At this point, if an applicant has additional information to be reviewed by the Planning Board, the applicant must bring ten copies of the information to the meeting and allow the Planning Board to review the relevant material. If the Planning Board determines the information can be reasonably reviewed and understood by the Board and any interested members of the public without causing a substantial delay to the meeting, the Board may vote to accept the additional information. If the Board denies the request to accept additional information, the project shall be reviewed as if the information is missing.
3. At any time during its review of a site plan application, the Planning Board may request additional information from the applicant and establish the due date for submitting such information. If the information is not submitted by the applicant by the due date, the application may be returned as incomplete.

**G. Additional Information.** At any time during its review of a preliminary subdivision plan or final subdivision plan application, the Planning Board may request additional information from the applicant.

**H. Phasing of Development.** The Planning Board may, in its discretion, approve plans to develop a subdivision in separate and distinct phases. This may be accomplished by limiting final approval to those lots abutting that section of the proposed subdivision road that is covered by a performance guarantee. When development is phased, road construction must commence from an existing public way. Final approval of lots in subsequent phases will be given only upon satisfactory completion of the requirements applicable to the previous phases.

**I. Written Decision.** The Planning Board must issue a written decision in accordance with Section I-8.C. Approval of a final subdivision plan does not constitute and is not evidence of acceptance by the Town of any road or easement.

**Section IV-4 Application Submission Requirements**

- A. **Copies.** For all application types, ten physical copies of the application and materials and one digital PDF copy shall be provided to the Code Enforcement Officer by the deadline date.
- B. **Sketch Plan Review.** The following requirements are necessary for all Sketch Plan Reviews regardless of review classification:

1. Completed Application Form. The application form will require information such as names and addresses of the owner of record and the applicant, names and addresses of any consultants working on the project, tax map and lot numbers, zoning information, and approximate size of the project.
2. A narrative description of existing conditions on the property- number and size of existing lots, physical constraints such as wetlands, and development opportunities.
3. Sketch of the proposed subdivision. The sketch may be freehand, but must show a rough outline of the proposed subdivision including a scaled layout of streets, lots, and other features that will illustrate the potential project to the Board.
4. Right, title, or interest in the property. A copy of the deed to the property, option to purchase the property, or other documentation to demonstrate right, title, or interest in the property is required.
5. A copy of a portion of the USGS topographic map (7.5 min. quad.) of the area showing the boundaries of the proposed subdivision.
6. List of any traffic studies, utility studies, State or Federal permits, potential waiver requests, or other applicable due diligence that will be completed for the project.
7. Additional information applicants may want to consider providing at Sketch Plan Review, although it is not required: Dimensions of proposed buildings, existing property burdens and restrictions such as easements, descriptions of proposed water and wastewater infrastructure, and potential special features of the subdivision, such as common area.

#### **C. Preliminary Plan Review.**

1. Completed Application Form: The application form will require information such as names and addresses of the owner of record and the applicant, names and addresses of any consultants working on the project, tax map and lot numbers, zoning information, and approximate size of the project.
2. If Applicant is a corporation, state whether the corporation is licensed to do business in Maine, and attach copy of Secretary of State's Registration.
3. Right, title, or interest in the property (option, land purchase contract, record ownership, etc.). A copy of such shall be provided. If right, title, or interest is proved by means other than a deed, provide a copy of the most recent deed for the property as well.
4. Identification of contiguous ownership of neighboring lots by applicant.
5. Names of property owners who abut the parcel to be subdivided, and on opposite side of any road from parcel to be subdivided.
6. Information within Existing Conditions narrative or Plan:

- a) Date plan was prepared, true north point, graphic map scale of not more than 100 ft. per one inch, unless otherwise deemed reasonable by the Board.
- b) Location of property lines, existing buildings, vegetative cover type, and other essential existing physical features.
- c) Location of all wetlands, regardless of size, all water bodies, and areas within the Shoreland Zone.
- d) Location and size of any existing sewer lines, water mains, culverts, subsurface sewage disposal systems, and wells.
- e) Other existing utilities such as electric.
- f) Contour lines at intervals within the range of 2'-5'.
- g) The location, names, and present widths of existing streets, highways, easements, building lines, parks, and other open spaces on or adjacent to the subdivision.
- h) Existing farmland within the property; active farmland sized five acres or more and areas designated as prime farmland or soils of Statewide or local importance if sized five acres or more.
- i) A copy of the Hancock County Soil Survey for the subject property.

7. Information on or accompanying Proposed Site Plan:

- a) Date plan was prepared, true north point, graphic map scale of not more than 100 ft. per one inch, unless otherwise deemed reasonable by the Board.
- b) Acreage of parcel to be subdivided as well as acreage of resulting lots.
- c) Proposed lot lines with approximate dimensions and suggested location, where known, of buildings.
- d) Location of all parcels to be dedicated to public use, the conditions of such dedication, as well as the location of all natural features of site elements to be preserved.
- e) Location of all proposed drains which shall provide adequate stormwater management as well as a stormwater management plan.
- f) Location and size of any proposed sewer lines, water mains, culverts, subsurface sewage disposal systems, and wells.
- g) Other proposed utilities such as electric.
- h) The Subdivider will determine, based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps, whether the subdivision is in a flood prone area. If the subdivision, or any part of it, is in such an area, the subdivider will delineate the 100-year flood elevation and flood hazard boundaries within the subdivision.

- i) Any restrictive covenants to be placed on the deeds.
- j) Traffic entering and exiting sight distances for all proposed intersections created to serve the development.
- k) If a structure is being subdivided into multiple dwelling units as part of the overall subdivision, provide a floor plan layout showing rooms, utilities, and other details within the structure.
- l) Other information not indicated above, as specified by the Board.

**8. Additional Narrative Information:**

- a) Standard boundary survey and internal development survey with complete descriptive data by bearings and distances, made by a professional land surveyor. The entire parcel shall be shown, including all contiguous land in common ownership within the last 5 years (Title 30-A M.R.S. § 4401).
- b) Street Addressing approved by the Town of Stonington E-911 addressing officer.
- c) Proposed soil erosion and sedimentation control plan prepared according to the most recent version of the Maine Erosion & Soil Control Best Management Practices Manual. The Board may waive submission of the erosion and sedimentation control plan only if the subdivision is not in the watershed of a Great Pond, and upon a finding that the proposed subdivision will not involve road construction or grading which changes drainage patterns and if impervious surfaces such as roofs and driveways are less than five percent of the area of the subdivision. Calculations establishing the impervious surfaces limitations shall be submitted with the waiver request and the maximum impervious surface for each lot shall be noted on the plan.
- d) Estimates of vehicular traffic created by the subdivision on a daily basis and during peak hours using the most recent edition of the Institute of Transportation Engineers figures. Trip generation rates from other sources may be used, with Board approval, if these sources better reflect local conditions.
- e) All areas within or adjacent to the proposed subdivision which are either listed on or eligible to be listed on the Local Register of Historic Places, or have been identified in the comprehensive plan as sensitive or likely to contain such sites. A letter from Maine Historic Preservation Commission stating the project will not adversely impact historic or archaeological sites is required.
- f) Map of High or Moderate Wildlife Habitat or irreplaceable natural areas within or adjacent to the property with letter from Maine Dept. of Inland Fisheries and Wildlife and Maine Natural Areas stating the project will not have an adverse impact on said habitats/areas.
- g) Narrative description of mail delivery.
- h) Proof of submittal for all State and Federal permits.

- i) Lighting Plan.
- j) Location and type of vegetative cover.
- k) Detailed design and construction plans for the infrastructure, including, but not limited to, roads, parking lots, sidewalks, and utilities in accordance with the Town's Ordinances.
- l) When water is to be supplied by an on-site well(s), a letter from a local well-driller or hydrogeologist familiar with the area indicating it is likely the water supply will be adequate. If water is to be supplied by public water supply, a letter from the Water District stating the project will not overburden the public system is required.
- m) Location of any sand and gravel aquifers as mapped by the Maine Geologic Survey (MGS).
- n) Description of solid waste collection within subdivision.
- o) Description of construction/demolition waste disposal during construction.
- p) Evidence of adequate financial and technical capability to complete the project in the form of a letter(s) from certified financial institution(s) and/or a letter of credit.
- q) If proposed roads or other land is to be offered to the Town, written evidence that the Selectboard are satisfied with the legal sufficiency of the written offer to convey title. All roads and other public improvements not dedicated to the Town during such time prior to the actual acceptance by the Town shall be maintained by the subdivision owners or developer.
- r) A draft of any road association or homeowners' association agreement to assure maintenance of private infrastructure and to ensure services to the subdivision.
- s) The construction items for which cost estimates and performance guarantees will be required to include a construction schedule, cost estimates considering inflation, provisions for inspections, and an estimated completion date.
- t) A statement on how the project complies with the most recent version of the Town of Stonington Comprehensive Plan.
- u) If located within the watershed of a Great Pond, a phosphorus management plan describing how the subdivision will not adversely impact the phosphorus concentration level within a Great Pond and that is prepared in compliance with the most recent version of the Maine Department of Environmental Protection Phosphorus Design Manual.
- v) Affidavit signed by the applicant indicating no timber harvest occurred on the tract within the preceding 5 years, or if it has, an affidavit signed by a licensed forester or an agent of the Maine Forest Service indicating the timber harvest was not in violation of rules adopted pursuant to 12 M.R.S. § 8869(14), as amended.

#### **D. Final Plan Review.**

1. Completed Application Form: The application form will require information such as names and addresses of the owner of record and the applicant, names and addresses of any

consultants working on the project, tax map and lot numbers, zoning information, and approximate size of the project.

2. Any updated versions of information provided in section C above, that have changed since the Preliminary Review.
3. The name, registration number, signature, and seal of the professional consultant who prepared the final subdivision plan. The Planning Board may not accept or approve a final subdivision plan that is not sealed and signed by the professional consultant under whose responsible charge it was completed.
4. Copies of all applicable state and federal approvals, including: (i) DEP approvals pursuant to the Site Location of Development Act (38 M.R.S.A. § 481 et seq.), NRPA, and 38 M.R.S.A. § 420-C (stormwater management); (ii) DOT approvals pursuant to the Access Management Law (23 M.R.S.A. § 704 et seq.); and (iii) DHHS approval for any proposed comparable/engineered sewer system and centrally managed water system.
5. Any additional information requested by the Board that assists in their ability to review the project for compliance with this Ordinance.

#### **Section IV-5 General Review Standards for All Subdivisions Involving Land**

- A. When reviewing an application involving land, the Planning Board, prior to granting approval, shall find that the following performance standards are met as described below, which are at least the minimum requirements from 30-A M.R.S. §4404, as well as all applicable provisions of the Shoreland Zoning Ordinance.
  1. **Pollution.** The project will not result in undue water or air pollution. In making this determination, the Planning Board shall at least consider:
    - a) The elevation of the land above sea level and its relation to the flood plain;
    - b) The nature of soils and subsoils and their ability to adequately support waste disposal;
    - c) The slope of the land and its effect on effluents;
    - d) The availability of streams for disposal of effluents; and,
    - e) The applicable State and local health and water resources rules and regulations.
  2. **Sufficient Water.** The project has sufficient water supply, either public or private, for the foreseeable needs of the subdivision and proof of such will be supplied in the application.
  3. **Erosion.** The proposal must not, alone or in conjunction with existing activities, cause unreasonable soil erosion or a dangerous or unhealthy reduction in the capacity of the land to hold water. Any filling, grading, dredging, lagooning, earthmoving, or other land disturbance activities must be conducted in such a manner to prevent soil erosion and

sedimentation into surface waters.

**4. Traffic.**

- a) The project will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed by providing the information requested in Section 4.2 of this Ordinance.
- b) If the proposed subdivision requires driveways or entrances onto a state or state aid highway, the applicant has discussed with the Maine Department of Transportation and the Department of Transportation has provided documentation indicating that the driveways or entrances conform to their required standards.

**5. Sewage Disposal.**

- a) Where any part of a proposed subdivision is located within 200 feet of a public sanitary sewer line, the subdivider shall connect with such sanitary sewer line by means of a main not less than 8 inches in diameter, provided however, that the appropriate municipal agencies shall first have certified that extending the services will not be an excessive burden on the system.
- b) Where private subsurface sewage disposal is to be utilized, the subdivider must conform to all State of Maine Plumbing Code requirements. Furthermore:
  - i) Disposal sites shall be totally contained within the lot being serviced.
  - ii) Systems shall be designed to the highest standards for the specified use.
  - iii) There shall be no contamination of existing or proposed wells, or any other water source.

**6. Solid Waste Disposal.** An applicant shall provide verification that the subdivision will not produce undue burden on the municipality's ability to collect and dispose of solid waste and that the method for solid waste disposal complies with all State requirements.

**7. Aesthetic, Cultural, and Natural Values.** The applicant shall provide evidence that aesthetic, cultural, and natural sites are not adversely impacted by the subdivision.

**8. Conformance with other Laws, Regulations, and Plans.** The proposed subdivision shall be in conformance with:

- a) All pertinent local, State, and Federal ordinances, statutes, laws, and regulations, including Shoreland Zoning provisions.
- b) If the proposed subdivision meets the definition of a subdivision as defined in the Site Location Act, Title 38, MRSA, Section 482, the subdivider must secure the approval of the State Board of Environmental Protection as well as the Board. When a proposed subdivision requires approval of the Board and the Board of Environmental Protection, each review may be conducted independently, and the Board may deny approval of the subdivision even though the Board of Environmental Protection has granted an approval under the provisions of the Site Location Act.
- c) The most recently adopted Town of Stonington Comprehensive Plan.

**9. Financial Capacity.** The applicant must have adequate technical and financial capacity to

develop, operate, and (as applicable) decommission the project in compliance with all applicable review standards, including the general review criteria in this Section III-4. Evidence of adequate technical capacity may include a written statement identifying the consultants and contractors involved in designing and constructing the project, as well as the long-term operators or managers of the project, and their respective expertise and experience with comparable projects. Evidence of adequate financial capacity may include a written statement from the lender or financing partner identifying the estimated project cost and confirming that the developer has funds to cover the cost.

10. **Surface Waters.** Whenever situated entirely or partially within the watershed of any pond or lake or within two hundred and fifty (250') feet of any wetland, great pond or, river as defined in 38 M.R.S.A. §§ 435-490, a project will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water per the Shoreland Zoning Ordinance.
11. **Groundwater.** A project will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.
12. **Flood Areas.** If any area of the subdivision is within the floodplain, the final plan must include a condition of plan approval prohibiting the construction of any dwellings or other structures except for access roads and essential utilities within the 100-year floodplain.
13. **Freshwater Wetlands.** All freshwater wetlands shall be mapped within the project area and all development is in compliance with shoreland zoning requirements in the Shoreland Zoning Ordinance.
14. **Farmland.** All farmland shall be mapped and the development shall not have a negative impact of farmland of statewide importance.
15. **Rivers, Streams, and Brooks.** Any river, stream, or brook within or abutting the proposed subdivision has been identified on maps submitted as part of the application and the development does not have a negative impact on these waterbodies. For purposes of this section, "river, stream, or brook" has the same meaning as in 38 M.R.S.A. §480-B.9.
16. **Stormwater.** The project will provide ample stormwater management ensuring the post-development flow rates and design do not create unreasonably negative impacts compared to pre-development flow rates and designs.
17. **Great Pond Phosphorus Concentration.** The applicant has provided sufficient evidence that the construction and use of the proposed subdivision will not unreasonably increase a Great Pond's phosphorous level.
18. **Land Subject to Liquidation Harvesting.** Proper procedures have been followed to

comply with subsection IV-4.C.8.v above.

19. **Spaghetti-lots Prohibited.** If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond as these features are defined in 38 M.R.S. §480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than five to one (5:1).
20. **Easements.** The Board may require easements for sewage, drainage, utilities, or public access.
21. **Affordable Housing.** All new proposed subdivision lots, apartment units, or condominium units are required to include 10% of such units be made available as affordable housing.
22. **Street Design and Construction.** All roads and accessways must meet the standards laid out in Section V-1.B.
23. **Performance Guarantees.** The Board may require that the subdivider file with the Board at the time of submission of the Final Plan a performance guarantee in an amount sufficient to defray all expenses of the proposed improvements. *See Section VI-8 of this Ordinance for specific instructions regarding performance guarantees.*
24. **Solar Energy Systems and Access to Direct Sunlight.** The Board may, for purposes of protecting and assuring access to direct sunlight for solar energy systems, prohibit, restrict or control development through subdivision regulations. The regulations may call for subdivision development plans containing restrictive covenants, height restrictions, side yard and setback requirements or other forms of permissible forms of land use controls.

## **Section IV-6 Additional Review Criteria for Mobile Home Parks**

Except as specified below, mobile home parks must comply with all requirements for a residential subdivision and all applicable state laws and local ordinances or regulations. Where the provisions of this Section IV-6 conflict with specific provisions contained elsewhere in this Ordinance, including in Chapter IV (Subdivision Regulations), the provisions of this Section IV-6 control.

- A. **Minimum Lot Size and Road Frontage.** Lots in a mobile home park must comply with the following minimum lot size and road frontage standards:
  1. Lots served by the Sanitary District:
    - (a) Minimum lot size: 5,000 sq. ft.
    - (b) Minimum road frontage: 50 feet
  2. Lots served by individual subsurface wastewater disposal systems:
    - (a) Minimum lot size: 20,000 square feet
    - (b) Minimum road frontage: 100 feet

3. Lots served by an engineered wastewater disposal system approved by the DHHS:
  - (a) Minimum lot size: 12,000 square feet
  - (b) Minimum road frontage: 75 feet
4. The overall density of a mobile home park served by a subsurface wastewater disposal system must not exceed one dwelling unit per 20,000 square feet of total park area.
5. Notwithstanding subsections A.1 to A.3, above, lots in a mobile home park in the shoreland zone must comply with the dimensional standards of the Town's Shoreland Zoning Ordinance.

B. **Change of Use.** No approved mobile home park subdivision may be converted to another use without the prior approval of the Planning Board, and any such subdivision must comply with the applicable dimensional standards and setback requirements for subdivisions. The final subdivision plan must include the following restrictions, as well as any other notes or conditions of approval:

1. The land within the mobile home park must remain in unified ownership and the fee to lots or portions of lots must not be transferred.
2. No dwelling unit other than a manufactured home, as that term is defined in 30-A M.R.S.A. § 4358, must be located within the mobile home park.

## Section IV-7 Post-Approval Requirements; Amendments to Approved Subdivision Plans

### A. Subdivision Plan Amendments.

1. Except as provided in subsection A.2, below, no changes, erasures, modifications, or other such revisions may be made to any final subdivision plan that has been approved by the Planning Board and endorsed in writing on the plan unless the changes, erasures, modifications, or other such revisions are approved by the Planning Board. Any proposal to change, erase, modify, or otherwise revise a final subdivision plan that has been approved by the Planning Board and endorsed in writing on the plan must comply with Section VI-4 for preliminary subdivision plan applications. Revisions or modifications to existing subdivision plans must satisfy the requirements of 30-A M.R.S.A. § 4407, and the Planning Board must make findings of fact establishing that the proposed revisions or modifications do or do not meet the general review criteria in Section VI-6 and, as applicable, the additional review criteria in Section VI-7.
2. The following incidental revisions or modifications to a final subdivision plan that has been approved by the Planning Board and endorsed in writing on the plan may be approved by the Planning Board without conducting a public hearing pursuant to, if in the judgment of the Planning Board such revisions or modifications will not alter any of the Planning Board's determinations with respect to any applicable review criteria or alter the essential nature of the approved subdivision plan:
  - (a) Immaterial corrections to locations of property boundary lines, setback lines, rights-of-way, easements, existing natural features, and existing or proposed structures.
  - (b) Typographical, clerical, or scrivener's errors.

Any such revision or modification must be endorsed in writing on the approved plan by a majority of the Planning Board.

- B. **Public Acceptance of Roads, Recreational Areas.** The Planning Board's approval of a subdivision plan does not constitute or evidence any acceptance by the Town of any road, easement, or other open space shown on such Plan. When a park, playground, or other recreation area is shown on a final subdivision plan, approval of the plan does not constitute an acceptance by the Town of such areas. The final subdivision plan must be endorsed with the appropriate notes to this effect.
- C. **Compliance with Road Standards.** Any modification to a subdivision which will increase the number of lots, whether accomplished one at a time or concurrently, must provide for access to the lots in compliance with the road design and construction standards in Section V.I.B.
- D. **Performance Guarantees.** The applicant must provide a performance guarantee in accordance with the requirements of Section VI-8 prior to final approval of any subdivision involving more than 10,000 square feet of ground disturbance or if the Planning Board otherwise determines in its discretion that a performance guarantee is necessary or appropriate to protect the interests of the Town.

## **Chapter V Specialized Development Review**

### **Section V-1 Additional Procedures and Review Criteria for Certain Uses and Structures**

#### **A. Affordable Housing Developments.**

- 1. **Applicability.** The additional submission requirements and review standards in this subsection A apply to affordable housing developments.
- 2. **Application Submission Requirements.** In addition to the requirements in Chapter III and Chapter IV, whichever are applicable, an application for affordable housing development must include the following unless waived by the Planning Board in accordance with Section I-13:
  - a) Written statements, maps, and other documentation addressing each of the additional review criteria set forth in subsection A.3, below.
  - b) An enforceable long-term plan providing for ongoing monitoring and inspections of all site infrastructure. The plan must provide, at minimum, a legally binding method for maintaining sufficient financial resources for performing ongoing maintenance, repair, and capital upgrades to all site infrastructure.
- 3. **Additional Review Criteria.** In addition to the general review criteria in Chapter III and IV, whichever are applicable, an affordable housing development must comply with the following review criteria:
  - a) **Affordable Housing Density Bonus.** For purposes of this subsection A, "base density" is the maximum number of dwelling units allowed on a lot not used for affordable housing development based on the applicable minimum lot size per dwelling unit allowed by State law. An affordable housing development that complies with this subsection A is eligible for a dwelling unit density bonus of up to 2½ times the base density that is otherwise allowed on the lot. If fractional results occur when calculating the density

bonus, the number of dwelling units is rounded down to the nearest whole number.

- b) Location. An affordable housing development must be located in an area of town, including in a shoreland zoning subdistrict, that allows multi-family dwellings.
- c) Water and Sewer. The affordable housing development must be served by a public, special district, or other centrally managed water system and a public, special district, or other comparable/engineered sewer system. Notwithstanding the foregoing requirement, the Town has no obligation to provide, install, or extend public sewer or water to any development.
- d) Long-Term Affordability. More than 51% of the total dwelling units in the affordable housing development must be designated as affordable rental units or affordable homeownership units. The owner of the affordable housing development must execute a restrictive covenant, in form acceptable to the Planning Board and for the benefit of and enforceable by the Town or a third party acceptable to the Planning Board, recorded in the Hancock County Registry of Deeds, to ensure that for at least 30 years after completion of construction, occupancy of all of the dwelling units designated affordable in the affordable housing development remains limited to households at or below 80% (for rental housing) or 120% (for owned housing) of the local area median income at the time of initial occupancy. The restrictive covenant must run with the land and encumber the affordable housing development, be binding upon the developer (for rental housing) or the unit owners (for owned housing) and their successors and assigns, and inure to the benefit of and be enforceable by the Town and a third party acceptable to the Planning Board.
- e) Height Bonus. Affordable Housing developments receive a 14 ft. allowable height bonus in addition to the base height allowed. This bonus must be approved by the Fire Chief based on whether available fire fighting apparatus allow for safe fire and life safety servicing of a building of the proposed height.
- f) Water and Wastewater Requirements.
  - i) The applicant must provide written verification that each proposed unit within the affordable housing development will be connected to adequate water and wastewater services, as required by this Ordinance.
  - ii) The applicant must make adequate provision for the long-term maintenance, repair, and improvement of any:
    - individual private septic system;
    - comparable/engineered sewer systems;
    - individual private wells; and
    - public water systems proposed to serve the units within the affordable

housing development, including a process of collection and enforcement to obtain capital improvement funds from the developer (for rental housing) or the unit owners (for owned housing).

- g) **Additional Requirements**. An affordable housing development must comply with all applicable requirements in the Town's Shoreland Zoning Ordinance and Chapter IV (Subdivision Regulations), Chapter III (Site Plan Review) and the state minimum lot size law as applicable.

**B. Street Design and Construction.**

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

1. All roads constructed in the Town of Stonington must be in compliance with the Town's Shoreland Zoning Ordinance.
2. Ditch relief culverts, drainage dips and water turnouts must be spaced along the road or driveway at intervals no greater than indicated in the following table:

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

- (a) Drainage dips may be used in place of ditch relief culverts only where the grade is 10% or less.
- (b) On sections having slopes greater than 10%, ditch relief culverts must be placed at approximately a 30-degree angle downslope from a line perpendicular to the centerline of the road or driveway.
- (c) Ditch relief culverts must be sufficiently sized and properly installed in order to allow for effective functioning, and their inlet and outlet ends must be stabilized with appropriate materials.

3. Ditches, culverts, bridges, dips, water turnouts, and other stormwater runoff control installations associated with roads and driveways must be maintained on a regular basis to ensure effective functioning.
4. Classification. For purposes of this section, roads are classified by function, as follows.
  1. **Arterial Roads**: Major thoroughfares serving primarily as major traffic ways for travel within and through the Town.
  2. **Collector Roads**: Roads serving at least 15 lots or at least 20 dwelling units, and feeder roads to arterial roads and collectors of traffic from minor roads.
  3. **Industrial/Commercial Roads**: Roads serving industrial and commercial uses requiring frequent tractor trailer and delivery truck usage.
  4. **Minor Roads**: Local roads serving less than 15 lots or 20 dwelling units.

Road classification is determined by the Planning Board as part of any subdivision, site plan, or Shoreland Zoning review, or by the Selectboard upon the petition of any person to accept a private road as a Town road, based on trip generations.

5. Except as provided in subsection E, below, all proposed roads must, to the greatest extent possible, comply with the following design standards:
  - a) Roads must be designed to provide safe vehicular travel while discouraging movement of through traffic on minor roads.
  - b) Reserve strips controlling access to roads are prohibited except where their control is definitely placed with the Town.
  - c) The arrangement, character, extent, width, grade and location of roads must be considered in their relation to existing or planned roads, to topographical conditions, to public convenience and safety, and their appropriate relation to the proposed use of land to be served by such roads. Grades of roads must conform as closely as possible to the original topography within the limits of these standards.
  - d) Road entrances leading onto existing or proposed arterial or collector roads must not be located within 400 feet of one another.
  - e) Entrances, whether proposed driveways or roads, onto existing state-aid or state highways must be approved by the DOT. Copies of such approval must be submitted to the Planning Board prior to site plan review, conditional use review, or review of the final subdivision plan.
6. The following design standards apply according to road classification:

ARTERIAL	COLLECTOR	INDUSTRIAL / COMMERCIAL	MINOR	PRIVATE ROAD OR EASEMENT

Minimum right-of-way (ft.)	66	50	66	40	40/25 <sup>1</sup>
Minimum travel way width <sup>2</sup> (ft.)	24	22	24	20	20
Sidewalk width (ft.)	5	5	5	5	N/A
Minimum grade (%)	0.50	0.50	0.50	0.50	0.50
Maximum grade (%) <sup>3</sup>	6	8	6	8	10
Minimum centerline radius (ft.)	500	230	400	150	150
Minimum tangent between curves of reverse alignment (ft.)	200	100	400	50	50
Roadway crown (in.)	1/4	1/4	1/4	1/4	1/4
Paved gravel (in.)	1/2	1/2	1/2	1/2	1/2
Minimum angle of street intersections <sup>4</sup>	90	90	90	75	75
Maximum grade within 75 feet of intersection (%)	2	2	2	2	5
Minimum curb (ft.)	30	20	30 <sup>5</sup>	20	5
Minimum right-of-way radii at intersections (ft.)	20	10	20	10	10
Minimum width of shoulders (ft.)	5	3	5	3	3

<sup>1</sup> If the Board determines a proposed private way or easement will not have utilities or stormwater infrastructure run along the road, and that the road will not be accepted by the Town as a public way in the foreseeable future, the minimum right-of-way may be decreased to 25 ft. without a waiver request.

<sup>2</sup> The minimum travel way width must be measured between curbs or interior edge of shoulders, whichever is less.

<sup>3</sup> Maximum grade may be exceeded for a road length of 100 feet or less.

<sup>4</sup> Street intersection angles must be as close to 90 degrees as feasible, but no less than 30 feet.

<sup>5</sup> Minimum curb must be based on turning radii of expected commercial vehicles, but no less than 30 feet.

7. The centerline of the road must be the centerline of the right-of-way.
8. Any dead-end road more than 150 feet in length must have a cul-de-sac at its terminus having no less than 120 feet outside diameter of the traveled way. Where the cul-de-sac is in a wooded area prior to the road construction, a stand of trees must be maintained within the center of the cul-de-sac.
9. The Planning Board may require the reservation of a 20-foot easement in line with the road to provide continuation of pedestrian traffic or utilities to any nearby road. The Planning Board may also require the reservation of a 50-foot easement in line with the road to provide continuation of the road where future subdivision development is possible.

**10. Grades, Intersections, and Sight Distances.**

- (a) Road grades must conform in general to the terrain so that cutting and filling is minimized while maintaining the grade standards in subsection D.6, above.
- (b) All changes in grade must be connected by vertical curve to provide the following minimum stopping sight distances based on the road design speed:

Design Speed (mph)	20	25	30	35
Stopping sight distance (ft.)	125	150	200	250

Stopping sight distance is calculated with a height of eye at 3.5 feet and the height of object at 0.5 feet.

- (c) Where new road intersections or driveway curb cuts are proposed, sight distances, as measured along the road onto which traffic will be turning, must be based on the posted speed limit and conform to the following standards:

Design Speed (mph)	25	30	35	40	45	50	55
Stopping sight distance (ft.)	250	300	350	400	450	500	550

Sight distance must be measured from the driver's seat of a vehicle standing on that portion of the exit with the front of the vehicle a minimum of 10 feet behind the curb line or edge of shoulder, with the height of the eye 3.5 feet to the top of an object 4.5 feet above the travel way.

Where necessary, corner lots must be cleared of all growth and sight obstructions, including ground excavation, to achieve the required visibility.

- (d) Cross (four-cornered) road intersections must be avoided to the greatest extent possible, except as allowed in the Comprehensive Plan. A minimum distance of 200 feet must be maintained between centerlines of side roads.

**11. Sidewalks. Where installed, sidewalks must meet the following requirements:**

- (a) *Bituminous Sidewalks.*
  - i. The crushed aggregate base course must be no less than eight inches thick.
  - ii. The hot bituminous travel way surface course must be no less than two inches after compaction.
- (b) *Concrete Sidewalks.*
  - i. The sand base must be no less than six inches thick.

- ii. The concrete must be reinforced with six-inch square, number 10 wire mesh and must be no less than four inches thick.
- 12. Granite curbing must be installed on a thoroughly compacted gravel base of six inches minimum thickness. Bituminous curbing must be installed on the base course of the travel way.
- 13. **Stormwater Management Design Standards**. All proposed roads must, to the greatest extent possible, comply with the following stormwater management design standards:
  - a) Adequate provision must be made for disposal of all generated stormwater and any drained groundwater through a management system of swales, culverts, under-drains, and storm drains. The stormwater management system must be designed to direct stormwater flows to existing watercourses or storm drains.
  - b) Where a road is traversed by a stream, river, or surface water drainage way, or where the surface water runoff must otherwise be controlled, swales, culverts, catch basins, or other means of channeling surface water must be designed by an engineer and must be installed, and easements or drainage rights-of-way for such elements must be provided.
  - c) Drainage easements for existing water courses or proposed drainage ways must be at least 30 feet wide and conform substantially with the lines of existing natural drainage.
  - d) All components of the stormwater management system must be designed to limit peak discharge to predevelopment levels for every storm between the 2-year and the 25-year, 24-hour duration, frequencies based on rainfall data for Bangor, Maine. When the discharge is directed to a major water body, peak discharge may not be increased from predevelopment levels unless downstream drainage structures are suitably sized.
  - e) The minimum pipe size for any storm drainage pipe is 15 inches. The maximum trench width at the pipe crown is the outside diameter of the pipe plus two feet. The pipe must be bedded in a fine granular material, containing no stones larger than three inches, lumps of clay, or other organic matter, reaching a minimum of six inches below the bottom of the pipe extending to six inches above the top of the pipe.
  - f) The stormwater management system must be designed to accommodate upstream drainage, accounting for existing conditions and planned developments not yet built and must include a surplus design capacity factor of 25% for potential increases in upstream runoff.
  - g) The storm drainage system must not overload existing or future planned storm drainage systems downstream.
  - h) Catch basins must be installed where necessary and located at the curb line.
  - i) Outlets must be stabilized against soil erosion by stone riprap or other suitable materials to reduce stormwater velocity. Wherever the stormwater drainage system is not within the right-of-way of a public road, perpetual easements must be provided to the Town allowing for maintenance and improvement of the system.

- j) Where soils require a subsurface drainage system, the drains must be installed and maintained separately from the stormwater drainage system.

## Chapter VI: Definitions, Construction, and Legal Provisions

### Section VI-1 Rules of Construction

It is the legislative intent of the voters of the Town, in adopting this Ordinance, that all provisions of this Ordinance be liberally construed to protect and preserve the health, safety, and welfare of the inhabitants of the Town. In the construction of this Code, the following rules apply, unless (i) such construction is inconsistent with the plain meaning of the affected provision of the Code and the context clearly otherwise requires, or (ii) a definition is otherwise provided in this Code:

- A. **Ordinance.** The word "Ordinance" means the Unified Development Ordinance of the Town of Stonington and any amendments thereto.
- B. **Computation of Time.** Whenever a notice is required to be given or an act to be done a certain length of time before any proceeding, the day on which such notice is given or such act is done is not counted in computing the time, but the day on which such proceeding is to be held is counted.
- C. **Delegation of Authority.** Whenever a provision of this Ordinance requires an officer of the Town to do some act or perform some duty, reference to such officer authorizes the officer to designate, delegate, and authorize subordinates to perform the required act or duty, unless the provision specifies otherwise.
- D. **Including.** The word "including" means "including, but not limited to."
- E. **Professional Consultants.** All references to professional consultants, including arborists, engineers, foresters, geologists, hydrogeologists, land surveyors, and soil scientists mean professionals that are licensed or registered by the Maine Office of Professional and Occupation Regulation and its licensing boards and programs or otherwise licensed or registered in accordance with applicable Maine laws and rules.
- F. **References to Chapters or Sections.** All references to chapters or sections are to the chapters and sections of this Ordinance, unless otherwise specified.
- G. **Shall, Must, Will, May Not, May, Should.** The words "shall," "must," "will," and "may not" are mandatory and not discretionary. The words "may" and "should" are permissive.
- H. **Technical Words.** Unless specifically defined in this Ordinance, words and phrases must be construed according to their customary dictionary meanings, except that technical words and phrases that have acquired a peculiar meaning in law must be construed according to such meaning.
- I. **Shoreland Zoning.** Any provisions concerning the shoreland zone will utilize definitions as presented in the Town's Shoreland Zoning Ordinance.

### Section VI-2 Definitions

**Accessory Structure or Accessory Use** — A structure or use that is incidental and subordinate to the principal structure or principal use on the same lot. Accessory uses, when aggregated, must 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 common wall is considered part of the principal structure.

**Addition** — An extension or increase in floor area or height of a building or structure.

**Affordable Housing Development** — A development composed of single-family dwellings, two-family dwellings, or multi-family dwellings and, (1) for rental housing, in which a household whose income does not exceed 80% of the area median income can afford 51% or more of the units in the development without spending more than 30% of the household's monthly income on housing costs; and, (2) for owned housing, in which a household whose income does not exceed 120% of the area median income can afford 51% or more of the units in the development without spending more than 30% of the household's monthly income on housing costs. For purposes of this definition, "housing costs" means: (a) for a rental unit, the cost of rent and any utilities (electric, heat, water, sewer, and/or trash) that the household pays separately from the rent; and (b) for an ownership unit, the cost of mortgage principal and interest, real estate taxes (including assessments), private mortgage insurance, homeowner's insurance, condominium fees, and homeowners' association fees.

**Aggrieved Party or Aggrieved Person** — A person who participated in a public hearing, if one is held under this Code, and (i) whose property is directly or indirectly affected by the grant or denial of a permit, approval, or variance under this Ordinance; (ii) whose land abuts land for which a permit, approval, or variance has been granted under this Ordinance; or (iii) who suffers a particularized injury as a result of the grant or denial of a permit, approval, or variance under this Ordinance.

**Agriculture** — The commercial production of plants and animals and their products to supply humans with food, feed, fiber, or fur, including forages and sod crops; grains and feed crops; dairy and dairy products; bees and bees' products; poultry and poultry products; livestock and livestock products; manure and compost; and fruits, berries, vegetables, flowers seeds, grasses and other similar products. This definition includes agricultural composting operations, agricultural support services, and farm operations, as those terms are defined in 7 M.R.S.A. § 152; the construction, alteration, or maintenance of farm or livestock ponds which are not fed or drained by a flowing water; the operation of machinery and the construction of buildings to store equipment, products, and materials for maintaining roads; other structures used primarily for agricultural purposes; and agritourism. This definition does not include agriculture primarily for household or personal use, forest management activities / timber harvesting activities, sawmills, piggery agriculture, poultry agriculture, or product processing agriculture.

**Alley** — A public or private right-of-way less than 22 feet wide that is primarily designed to serve as a secondary access to the rear or side of those properties whose principal road frontage is on another road.

**Alteration** — A change or modification requiring movement in the location of major structural members of a building, including bearing walls, columns, beams, girders, or substantial remodeling, but not including cosmetic, decorative, or appliance/fixture upgrades or routine maintenance or

repair of a building.

**Applicant** — A person with sufficient right, title, or interest to submit an application for a permit or approval or a variance request to a reviewing authority pursuant to this Code. This definition may include any duly authorized designee or agent of the applicant if the context so dictates.

**Aquifer** — A saturated permeable geologic unit consisting of unconsolidated sediment or bedrock that can yield economically valuable quantities of water. This definition includes all areas specifically mapped as aquifers by the Maine Geological Survey or a geologist.

**Area Median Income** — The midpoint of a region's income distribution calculated on an annual basis by the U.S. Department of Housing and Urban Development ("HUD"). For purposes of this definition, "region" is the HUD-designated metropolitan area that includes the Town.

**Buffer or Buffer Strip** — A defined and described lot, or portion of a lot, that (i) must remain unaltered, vegetated, revegetated, unscarified, undisturbed, and/or in its natural state, or (ii) serves to minimize environmental impacts to natural resources or audiovisual impacts to surrounding properties, as the context may dictate.

**Buildable Area** — The surface area of a lot, minus the area of all required minimum setback areas and open space requirements.

**Building** — Any structure arranged, designed, intended, or used for the shelter, housing, or enclosure of persons, animals, processes, equipment, or property.

**Campground** — An area of land devoted to overnight recreational or educational use on a short-term basis, where the area is divided into more than four but fewer than 100 campsites. This definition does not include resorts / glampgrounds.

**Campsite** — An area of land that is devoted to overnight recreational or educational use on a short-term basis by up to 10 individuals, and which contains primitive site improvements such as a gravel pad, parking area, fire pit, and tent platform. A campsite not associated with a campground is limited to one such site within the shoreland zone and four or fewer such sites outside the shoreland zone. This definition does not include resorts / glampgrounds.

**Centrally Managed Water System** — A "centrally managed water system" as that term is defined the DECD Municipal Land Use and Zoning Ordinance Rule, codified at 19-100 C.M.R. ch. 5, § 1(B).

**Commercial Use** — The use of land, buildings, or structures to buy and sell goods or services, which use is intended for and results in the production of income. This definition does not include a home occupation or the rental of residential buildings or dwelling units.

**Common Lot Line** — Refer to "minimum setback from any common lot line."

**Comparable/Engineered Sewer System** — A "comparable sewer system" as that term is defined the DECD Municipal Land Use and Zoning Ordinance Rule, codified at 19-100 C.M.R. ch. 5, § 1(B).

**Comprehensive Plan** — (i) Any part or element of the overall plan and policy for development of the Town, as defined in 30-A M.R.S.A. §§ 4301-4357; or (ii) the *Town of Columbia Falls Comprehensive Plan*, as amended, as the context dictates.

**Conditional Use** — Any use, or structure associated with such use, that is generally inappropriate in a land use district *unless* controlled as to location, design, size, scale, bulk, hours of operation, and other characteristics so as to have no undue adverse impact on neighboring uses or the public health, safety, or welfare.

**Complete for Review** — A determination by the reviewing authority that an application is accepted and ready for substantive review by the reviewing authority based on whether the application is accompanied by the proper application fee; contains sufficient documentation of right, title, or interest; and contains sufficient information for the reviewing authority to begin its review.

**Corner Lot** — A lot abutting and at the intersection of two or more roads.

**Curb Cut** — The connection to a road, or opening along the curb line, at which point vehicles may enter or leave the road.

**Development** — A change in land use involving alteration of the land, water, or vegetation; or the addition or alteration of structure; or other construction not naturally occurring.

**Dimensional Standards** — The minimum lot size, minimum road frontage, minimum shore frontage, maximum lot coverage, minimum public road setback, minimum setback from any common lot line including from private roads, minimum shoreland setback, and maximum height.

**Driveway** — A vehicular access route or right-of-way less than 500 feet in length serving or intended to serve any structure, use, or vacant lot, except if such a driveway is proposed as part of a subdivision, site plan review, or conditional use application in which case it is a road.

**Dwelling, Multi-Family** — A building consisting of three or more attached dwelling units.

**Dwelling, Single-Family** — A building designed or intended to be used exclusively for residential occupancy by one family, and containing one dwelling unit.

**Dwelling, Two-Family** — A building consisting of two attached dwelling units.

**Dwelling Unit** — A structure or portion of a structure containing one or more rooms or group of rooms designed, built, and used for permanent or seasonal human habitation, with each such unit containing cooking, sleeping, and toilet facilities. “Dwelling unit” includes manufactured homes (including mobile homes and modular homes), as defined in 30-A M.R.S.A. § 4358, but does not include motel units, hotel units, boarding houses, agricultural labor housing facilities as defined in 26 M.R.S.A. § 585, recreational vehicles, or other residential units intended primarily for transient occupancy. The long-term rental of a dwelling unit is considered a usual and normal use associated with a dwelling unit.

**Dwelling Unit, Accessory or ADU** — A self-contained dwelling unit that is located within, attached

to, or detached from a single-family dwelling.

**Easement** — The authorization of a property owner for the use by another, and for a specified purpose, of any designated part of the owner's property.

**Essential Services** — Gas, electrical, or communication facilities; steam, fuel, electric power, or water transmission or distribution lines; towers and related equipment; telephone cables or lines, poles, and related equipment; gas, oil, water, slurry, or other similar pipelines; municipal sewage lines; collection or supply towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants, and similar accessories. This definition does not include service drops or buildings that are necessary for the furnishing of essential services, solar energy systems, or communication towers.

**Expansion of a Structure** — An increase in the footprint, floor area, or height of a structure, including all extensions such as decks, garages, porches, and greenhouses.

**Expansion of a Use** — An enlargement of the footprint, floor area, or ground area devoted to a use; a change in the location of a use; the addition of one or more months to a use's operating season; or a change in character, amount, or intensity of a use. A change in use from one land use category to another land use category in the schedules of uses in the Town's Shoreland Zoning Ordinance is *prima facie* evidence of a change in character of a use.

**Floodplain** — A flood-prone area along rivers and adjacent to tidal waters, defined by the 100-year floodplain as designated on FEMA Flood Insurance Rate Maps or Flood Hazard Boundary Maps or by the flood of record, or in the absence of these, by soil types identified as recent floodplain soils by the National Cooperative Soil Survey.

**Floor Area** — The sum of the horizontal areas of the floors of a building (excluding basement and attics), measured from the exterior faces of exterior walls or, in the case of a common wall separating two buildings, from the center line of the common wall.

**Footprint** — The entire area of ground covered by a building or structure on a lot, including cantilevered or similar overhanging extensions, as well as unenclosed structures such as patios and decks.

**Foundation** — The supporting substructure of a building or structure, including basements, slabs, frost walls, or other base consisting of concrete, block, brick or similar material, but excluding wooden sills and post supports.

**Greatest Extent Possible** — Feasible or capable of being done or carried out considering 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 subsurface wastewater disposal systems and on-site soils suitable for such systems, and the type and amount of vegetation to be removed to accomplish the intended activity.

**Groundwater** — Underground water located in unconsolidated sediment or bedrock below the water table and includes ground water emanating to the surface in the form of springs.

**Height** — The vertical distance of a structure, as measured from the mean original grade (prior to construction) of the ground at the downhill side of the structure to the highest point of the roof or any rooftop structure or feature such as a deck, fence, railing, or widow's walk, but excluding the vertical distance of any (i) chimney, steeple, heating or cooling appurtenance, ventilator, antenna, transmission tower, communication tower, windmill, skylight, tank, bulkhead, roof-mounted solar panel, or similar structure having no floor area, or (ii) dome, tower, or spire provided such feature is not habitable or accessible by the public. For ground-mounted solar energy facilities and accessory solar energy systems, the vertical distance between the mean original grade (prior to construction) at the point where a solar panel is fixed to the ground and the highest point of the solar panel when oriented at maximum tilt.

**Home Occupation** — An occupation or profession that is conducted on residential property or in a dwelling unit, and (i) is clearly incidental to, subordinate to, and compatible with the residential use of the property and any surrounding residential uses; (ii) uses no more than 10,000 square feet of outdoor area of the residential property; and (iii) uses no more than 30% of the floor area of the dwelling unit in which the occupation is carried out.

**Impervious Surface** — A low-permeability material that is highly resistant to infiltration by water (such as asphalt, concrete, or rooftop) and any area that will be compacted through design or use to reduce its permeability (such as a gravel road or unpaved parking area). Common impervious surfaces include rooftops, walkways, patios, driveways, parking lots, storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and macadam or other surfaces that similarly impede the natural infiltration of stormwater. Pervious pavement, pervious pavers, pervious concrete, and underdrained artificial turf fields are all considered impervious surfaces. Naturally occurring ledge and rock outcroppings are not impervious surfaces.

**Infrastructure** — All public and private roads; drainage structures; ditches; erosion, sedimentation and stormwater control measures; utilities; landscaping; fire protection systems; recreation structures; centrally managed water systems; comparable/engineered sewer systems; and any additional common property or basic facilities associated with a development or subdivision.

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

**Lot Coverage** — Refer to "maximum lot coverage."

**Main Street** — The section of Main Street bounded by Green Head Road to the west and Seabreeze Avenue to the east.

**Maximum Lot Coverage** — The maximum percentage of area covered by buildings, structures, parking areas, driveways, and impervious surfaces on a lot.

**Minimum Lot Size** — The minimum acreage of a lot for each principal building located on the lot.

**Minimum Public Road Setback** — The minimum setback from a public road along the full length of the road right-of-way.

**Minimum Road Frontage** — The minimum length of the lot line bordering on a road (or, in the case of a corner lot, the longer lot line bordering a road), measured in a straight line between the intersections of the lot lines with the road.

**Minimum Setback** — The horizontal distance from the nearest part of a structure, parking area, or other regulated object or area to a lot line, road, the normal high-water line of a water body, or the upland edge of a wetland, as the context may dictate.

**Minimum Setback Area** — The portion of a lot that is located between the minimum setback line and the lot line which it parallels.

**Minimum Setback From Any Common Lot Line** — The minimum setback from a lot line shared between properties other than a property line that abuts a public road.

**Minimum Setback Line** — A line paralleling a lot line which indicates the closest distance a structure or parking area can be from any given lot line.

**Mobile Home or Modular Home** — Refer to “dwelling unit.”

**Mobile Home Park** — A lot under unified ownership used or intended to be used for the placement of three or more manufactured homes (including mobile homes and modular homes), as that term is defined in 30-A M.R.S.A. § 4358.

**Potable** — “Potable” as that term is defined the DECD Municipal Land Use and Zoning Ordinance Rule, codified at 19-100 C.M.R. ch. 5, § 1(B).

**Principal Building or Principal Structure** — A building or structure where the principal use of the lot is conducted.

**Principal Use** — A use other than one that is wholly incidental or accessory to another use on the same lot.

**Protected Natural Resources** — Water bodies; wetlands; public drinking water sources, as defined in 38 M.R.S.A. § 490-A; and the following areas to the extent that they have been identified by MDIFW: habitat for species appearing on the official state or federal lists of endangered or threatened animal species, deer wintering areas and travel corridors, high and moderate value waterfowl and wading bird habitats (including nesting and feeding areas), critical spawning and nursery areas for Atlantic sea run salmon, shorebird nesting, feeding, and staging areas and seabird nesting islands; and significant vernal pools.

**Public Road** — An area or strip of land designated and held by a governmental entity for the passage and use of the general public by motor vehicle or foot.

**Public Road Lot Line** — Any property line that directly abuts a public road.

**Public Open Space** — Land set aside for active or passive recreation by the public and either owned by a public entity or protected as open space in perpetuity through a conservation easement or other legally binding deed restriction.

**Relocate** — To move a building to another position or location on the same or a different lot.

**Repair** — To restore a building to sound condition.

**Replace** — To put back in place, or to substitute something which is not structurally sound for something which is structurally sound.

**Replacement System** — A subsurface wastewater disposal system intended to replace (i) an existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of a structure, or (ii) any existing overboard wastewater discharge.

**Re-subdivision** — The division of a previously subdivided lot at any future point in time.

**Reviewing Authority** — The Town's Selectboard, Planning Board, Board of Appeals, or Code Enforcement Officer as the context may dictate.

**Riprap** — Rocks, irregularly shaped, and at least six inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two units horizontal to one unit vertical or less.

**Road** — A route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles. This definition does not include driveways.

**Road Frontage** — Refer to "minimum road frontage."

**Setback Area** — Refer to "minimum setback area."

**Setback Line** — Refer to "minimum setback line."

**Shrub** — A woody plant, deciduous or evergreen, hardy for Plant Zones 4 or 5, which may have a single trunk or multiple trunks and normally achieves a height at maturity of no more than 15 feet and no less than three feet.

**Sidewalk** — A way for pedestrian traffic located parallel to a road, which is constructed with pavement, pavers, bricks, and other similar surfaces but not gravel.

**Sign** — Any structure, display, logo, device, or representation that is designed or used to advertise or call attention to any activity, business, event, person, place, or thing. This definition does not include (i) the flag, pennant, or insignia of any nation, state or town, or (ii) any temporary sign posted for 6 weeks or less from January 1 to June 30 or for 6 weeks or less from July 1 to December 31. Whenever dimensions of a sign are specified, they include frames.

**Solar Energy Facility** — A ground-mounted solar energy system with a nameplate capacity greater than 125 kW (DC), which occupies a solar land area greater than 400 square feet and 20 acres or less. This definition includes a solar microgrid. This definition does not include an accessory solar energy facility.

**Solar Energy Facility, Accessory** — A solar energy system, other than a solar microgrid, that is

located on a lot that is developed with a principal structure and whose nameplate capacity is 125 kW (DC) or less and is either (i) roof-mounted, or (ii) ground-mounted, does not exceed a height of 20 feet, occupies a solar land area 400 square feet or less, and is located no closer to the public road lot line than the principal structure on the lot.

**Solar Energy System** — A complete assembly of solar collectors and associated mounting hardware, electricity storage equipment, transmission and distribution lines, and related infrastructure that uses solar photovoltaic (PV) technology (including solar panels) to collect, convert, store, and deliver electricity for on-site or remote consumption. A solar energy system may be roof-mounted or ground-mounted.

**State Drinking Water Rules** — The Maine Rules Relating to Drinking Water, codified at 10-144 C.M.R. ch. 231.

**State Minimum Lot Size Law** — The Maine Minimum Lot Size Law, codified at 12 M.R.S.A. Ch. 423-A.

**State Wastewater Disposal Rules** — The Maine Subsurface Wastewater Disposal Rules, codified at 10-144 C.M.R. ch. 241.

**Street Wall** — A fence, wall, or strip of vegetation that maintains a continuous visual definition along a lot line.

**Structure** —

- Outside of the shoreland zone: Anything constructed, erected, or placed on the ground that is permanent, temporary or mobile, including buildings, mobile homes, recreational vehicles, piers and pads, parking lots, and storage and processing facilities. This definition does not include boundary walls, fences, walkways, patios, flagpoles light poles, and signs.
- Within the shoreland zone: Anything temporarily or permanently located, built, constructed, or erected for the support, shelter, or enclosure of persons, animals, goods, or property of any kind or anything constructed or erected on or in the ground. “Structure” includes structures temporarily or permanently located, such as parking lots, decks, patios, and satellite dishes. This definition does not include fences; poles and wiring and other aerial equipment normally associated with service drops, including guy wires and guy anchors; subsurface wastewater disposal systems as defined in 30-A M.R.S.A. § 4201(5); geothermal heat exchange wells as defined in 32 M.R.S.A. § 4700-E(3-C); or wells or water wells as defined in 32 M.R.S.A. § 4700-E(8).

**Subdivision** — “subdivision” as that term is defined in 30-A M.R.S.A. § 4401(4).

**Subdivision Plan, Final** — The final drawings on which a subdivision plan is presented to the Planning Board for its consideration and which, if approved, must be filed with the Town and recorded in the Washington County Registry of Deeds.

**Subdivision Plan, Preliminary** — The preliminary drawing indicating the proposed layout of a subdivisions presented to the Planning Board for its consideration.

**Substantial Completion** — Completion of 70% of a project, measured as a percentage of the total

project amount.

**Substantial Start** — Completion of 30% of a permitted structure or use measured as a percentage of estimated total cost.

**Subsurface Wastewater Disposal System** — Any system designed to dispose of waste or wastewater on or beneath the surface of the earth, including septic tanks, disposal fields, grandfathered cesspools, holding tanks, pretreatment filters, piping, or any other fixture, mechanism, or apparatus used for those purposes. This definition does not include any discharge system licensed under 38 M.R.S.A. § 414, any surface wastewater disposal system, or any municipal or quasi-municipal sewer or wastewater treatment system.

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

**Topsoil** — The upper, outermost layer of soil, usually the top two inches to eight inches, which has the highest concentration of organic matter and microorganisms and is where most biological soil activity occurs.

**Tree** — A woody perennial plant with a well-defined trunk at least two inches DBH, with a more or less definite crown, and reaching a height of at least 10 feet at maturity.

**Use** — The purpose or activity for which land or structures are designed, arranged, or intended or for which land or structures are occupied or maintained.

**Variance** — A relaxation of the provisions of this Code as permitted by state law and Section I-13.

**Water Body** — A river, tributary stream, or stream.

**Water Table** — The underground water surface at which the pressure is equal to that of the atmosphere. The water table elevation changes throughout the year in response to precipitation recharge and the level of nearby surface water.

**Wetland** — A freshwater wetland or coastal wetland as defined in the Town's Shoreland Zoning Ordinance.

**Woody Vegetation** — Live trees or woody, non-herbaceous shrubs.

### **Section VI-3 Date of Applicability**

Notwithstanding 1 M.R.S.A. § 302, this Ordinance applies to an action or proceeding, including a petition or application for permits or licenses required by law at the time of their filing, when the reviewing authority has deemed the petition or application complete for review.

### **Section VI-4 Conflicts with Other Ordinances or Code Provisions**

Whenever a section, paragraph, sentence, clause, or phrase of this Ordinance conflicts with or is inconsistent with another section, paragraph, sentence, clause, or phrase of this Ordinance or another ordinance, regulation, or rule administered by the Town, the more restrictive section, paragraph, sentence, clause, or phrase controls.

### **Section VI-5 Amendments**

This Ordinance may be amended by the legislative body of the Town in accordance with applicable state law.

- A. Amendments to the text of this Ordinance may be proposed by the Selectboard, by the Planning Board, or upon the written petition of registered voters of the Town pursuant to 30-A M.R.S.A. §§ 2522 or 2528 (as applicable).
- B. A public hearing on any proposed amendments to the Ordinance must be conducted by the Planning Board, serving as the municipal reviewing authority, pursuant to 30-A M.R.S.A. § 4352.
- C. Following the public hearing, the Planning Board may recommend to the Selectboard whether or not an article to amend the Ordinance should be included in the warrant for a regular or special Town meeting. In making its recommendation, the Planning Board may recommend amendments to the text of the Ordinance that deviate from the original proposed amendments. The Planning Board will endeavor to submit its recommendation to the Selectboard within 30 days of the conclusion of the public hearing. Planning Board action under this Section VI-5 is not a decision subject to any rights of appeal.
- D. The Selectboard, by a majority vote, must determine whether to place an article to amend the Ordinance in the warrant for a regular or special Town meeting.
- E. Any public hearings required to be held by the Planning Board and the Selectboard under this Section VI-5 or applicable law may be combined into a single consolidated hearing attended by both boards as long as the notice requirements applicable to both the Planning Board and Selectboard hearings are satisfied.

### **Section VI-6 Effect of Repeal or Amendment**

Whenever a provision of this Ordinance is repealed or amended, such repeal or amendment must not be construed to revive such former provision unless it is so expressly provided therein.

The repeal or amendment of a provision of this Ordinance will not affect any enforcement action

taken or penalty incurred before the repeal or amendment took effect, nor any suit, prosecution, or proceeding to which this Ordinance applied at the time of the repeal or amendment, for an offense committed or cause of action arising under the repealed or amended provision.

## **Section VI-7 Compliance and Enforcement; Penalties**

- A. **Nuisance.** Any violation of this Ordinance is deemed to be a nuisance.
- B. **Enforcement Authority.** The CEO is responsible for enforcing the provisions of this Ordinance and the terms and conditions of any permit or approval issued under this Ordinance. The CEO is appointed or reappointed annually and, if certified in accordance with 30-A M.R.S.A. § 4451, has all of the powers and authorities described in 30-A M.R.S.A. § 4452.
- C. **Inspections; Investigation of Complaints.** The CEO may conduct site inspections to ensure compliance with all applicable laws and all terms and conditions attached to permits and approvals under this Ordinance. The CEO may also investigate all complaints of alleged violations of this Ordinance.
- D. **Right of Entry.** The CEO has a right to enter any property or enter any building pursuant to 30-A M.R.S.A. § 4452(1).
- E. **Notice of Violation.** If, after investigation, the CEO finds that any provision of this Ordinance or any terms or condition of a permit or approval issued under this Ordinance has been violated, the CEO must give written notice of the violation, in person or by certified mail return receipt requested, to the owner or occupant of the premises and to any other person responsible for the violation, indicating the nature of the violation and ordering any action necessary to correct it (including discontinuance of illegal use of structures or lots; discontinuance of work being done; removal or relocation of illegal structures; and abatement of nuisance conditions) within some designated reasonable time. A copy of each such notice of violation must be submitted to the Selectboard.
- F. **Suspension and Revocation of Permits and Approvals.** A permit or approval may be suspended or revoked by the CEO if the CEO determines that:
  - 1. The permit or approval was issued on materially incomplete or false information;
  - 2. Continuation of the work authorized under the permit or approval would result in a violation of federal or state law, this Ordinance, or any other Town ordinances, regulations, or rules;
  - 3. Continuation of the work authorized under the permit or approval is endangering or may endanger the public health, safety, or welfare;
  - 4. The permit holder exceeded the scope of the work authorized under the permit or approval;
  - 5. A term or condition of the permit or approval issued under this Ordinance has been violated; or
  - 6. The CEO is unable to determine the continued validity of a permit or approval.

The CEO must give written notice of suspension or revocation to the permit holder stating the reason for the suspension or revocation and, in the case of suspension,

the measures that must be taken by a date certain to correct the violation.

A suspension remains in force until the CEO determines that (i) the permit holder can and will pursue the work authorized under the permit or approval without continuing, extending, or creating a violation; (ii) the violation has been abated or otherwise discontinued; or (iii) a new permit or approval has been issued. When cause for a suspension has been removed or corrected, the CEO must so certify in writing. If, within the time specified for correction, cause for the suspension has not been removed or suspended, the CEO may continue the suspension or revoke the permit or approval.

No work authorized under a suspended or revoked permit or approval may continue except work that is necessary to protect the public health, safety, and welfare, as authorized in writing by the CEO.

G. **Legal Prosecution of Violations.** If, after notice and demand, a violation has not been abated within the time specified in the notice of violation, the CEO must refer the matter to the Selectboard, who may institute in the name of the Town any and all actions and proceedings, in law or in equity, including seeking injunctions of violations and the imposition of fines, that the Selectboard determines are appropriate or necessary to prevent, correct, restrain, or abate any violation of this Ordinance.

H. **Consent Agreements.** The Selectboard is authorized to enter into administrative consent agreements for the purpose of resolving violations of this Ordinance and recovering fines without legal prosecution.

1. In determining what, if any, monetary penalty to impose as part of an administrative consent agreement, the Selectboard may consider (i) how long the violation has existed; (ii) the nature and circumstances of the violation and the violator; (iii) whether a permit or approval was issued for the work; (iv) whether the violation was the result of survey work that caused a shift of boundary lines; (v) the statutory minimum and maximum penalties for land use violations set forth in 30-A M.R.S.A. § 4452; and (vi) such other facts and considerations as the Selectboard deems relevant.

I. **Fines and Penalties.** Any person who violates any term or condition of a permit or approval or who violates or continues to violate any provision of this Ordinance after receiving notice of such violation is subject to such fines, penalties, actions and orders as are authorized by 30-A M.R.S.A. § 4452. A fine or penalty may be imposed for each violation. Each day that a violation continues constitutes a separate offense.

## **Section VI- 8 Performance Guarantee**

Whenever one or more performance guarantees are required by this Ordinance or as a condition of approval of a permit or approval issued by the Planning Board pursuant to this Ordinance, the following requirements apply:

A. **Review; Delegation.** The performance guarantee must be satisfactory to the Planning Board as to scope, amount, form, sufficiency, manner of execution and surety. The Planning Board may delegate to the Town Manager the review and acceptance of a performance guarantee in accordance with this Section VI-8.

- B. **Form.** The performance guarantee must be in the form of a performance bond, a certified check payable to the Town, an escrow account, an irrevocable letter of credit, or some other form of guarantee that is acceptable to the Planning Board.
- C. **Scope; Amount.** The performance guarantee must be of an amount sufficient to cover the full cost of all required infrastructure, reclamation of disturbed land, and/or decommissioning of any facilities or infrastructure associated with the proposal, as determined by the Planning Board. Separate performance guarantees may be required by the Planning Board for any required site infrastructure, reclamation work, and decommissioning work.
  - 1. For reclamation and decommissioning work, the permit holder must arrange for the costs to be recalculated by an engineer every five years, and the amount of the performance guarantee may be adjusted by the Planning Board if the calculated cost of reclamation or decommissioning materially changes.
- D. **Schedule.** The performance guarantee must contain (i) a schedule and cost estimates for each major phase of required site infrastructure, reclamation work, or decommissioning work, taking into account inflation; (ii) a basis for estimating costs; (iii) provision for the release of part or all of the performance guarantee to the permit holder; and (iv) a date after which the permit holder will be in default and the Town must have access to the guaranteed funds to complete required site infrastructure, reclamation work, or decommissioning work. The Planning Board may approve phased performance guarantees when activity is approved in separate and distinct phases.
  - 1. **Time for Completing Required Site Infrastructure.** A period of one year, or such a period as the Planning Board may determine appropriate and necessary, not to exceed three years, must be set forth in the performance guarantee as the time within which any required site infrastructure must be completed. The Planning Board may extend this deadline by 12 months upon a showing of good cause.
- E. **Inspections.**
  - 1. **Escrow; Selection of Inspector.** At least seven days prior to commencing construction of any required site infrastructure, and at least 30 days prior to commencing any reclamation work or decommissioning work, the permit holder must deposit in escrow with the Town funds to cover the costs of site inspections to be conducted by an engineer mutually acceptable to the permit holder and the Planning Board. The contractual rate and all indirect charges constitute the expenses for which the permit holder's escrow account will be charged. The Planning Board must determine the type and frequency of inspections reasonably necessary to protect the environmental quality or general welfare of the Town and the amount required to be placed in escrow. Any part of this escrow payment in excess of the final costs for inspections must be returned to the permit holder.
  - 2. **Building Permits.** No building permits will be issued for any project and no work will begin until an escrow payment has been made for the site inspections related to any required site infrastructure.
  - 3. **Inspections; Addressing Deficiencies.** If the inspector finds, upon inspection of the required site infrastructure, reclamation work, or decommissioning work, that any of the site infrastructure or work has not been done in accordance with the plans and specifications filed by the applicant, the long-term management plan, the reclamation plan, the decommissioning plan, or any applicable conditions of approval, the

inspector must so report to the Town Manager. The Town Manager must then notify the permit holder. The Town Manager may take any necessary steps to preserve the Town's rights under the performance guarantee and to remedy any insufficiencies identified by the inspector. The Town Manager may, in the Town Manager's discretion, allow the permit holder a period of time not to exceed 90 days, to remedy any insufficiencies identified by the inspector.

4. **Certification.** Before a permit holder may be released from any performance guarantee obligation, the inspector must certify to the Town that all required site infrastructure, reclamation work, and decommissioning work has been satisfactorily completed in accordance with conditions of approval, reclamation plans, decommissioning plans, long-term maintenance plan, and applicable state, federal, and local laws, rules, and regulations.

F. **Release.** Upon certification in accordance with subsection E.1, above, the permit holder may apply to the Selectboard for the release of all or part of the performance guarantee. Prior to the release of any part of a performance guarantee, the Selectboard must determine that the required site infrastructure, reclamation work, and decommissioning work comply with the requirements for that portion of the work for which a release is requested.

#### **Section VI-9 Validity and Severability**

The sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable. If any section, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, such unconstitutionality, invalidity, or unenforceability does not affect the validity of any remaining sections, paragraphs, sentences, clauses, and phrases of this Ordinance.