



FLOODPLAIN MANAGEMENT ORDINANCE FOR THE TOWN OF SOUTHWEST HARBOR

Attest a true copy

TOWN CLERK

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SECTION I. PURPOSE AND ESTABLISHMENT

Certain areas of the Town of Southwest Harbor are subject to periodic flooding, causing serious damage to properties within these areas. Relief is available in the form of flood insurance as authorized by the national Flood Insurance Act of 1968.

Therefore, in 1977 the Town of Southwest Harbor chose to become a participating community in the National Flood Insurance program, and agreed to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this Floodplain management Ordinance.

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

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

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

The areas of special flood hazard, Zone A, AE and VE, are identified by FEMA in a report entitled "Flood Insurance Study – Town of Southwest Harbor, Maine, Hancock County." effective June 3, 1991, with accompanying 'Flood Insurance Rate Map', which are hereby adopted by reference and declared to be a part of this Ordinance.

The Flood Insurance Rate Map was revised by a Letter of Map Revision (LOMR) to reflect a decrease in the base (100-year) flood elevation (bfe) and a change in the Special Flood Hazard Area zone designation along the shoreline south of Clark Point. This revision became effective June 17th, 1992.

SECTION II. PERMIT

- A. Before any construction or other development (as defined in SECTION XIII, DEFINITIONS, page 24) including the placement of manufactured homes, begins within any areas of special flood hazard established in Section 1, a Flood Hazard Development Permit shall be obtained from the Planning Board or the CEO. This permit shall be in addition to any other permits which may be required pursuant to the Ordinance of the Town of Southwest Harbor.
- B. The application shall include:
 - 1. the name, address and phone number of the applicant, owner and contractor;
 - 2. an address and a map indicating the location of the construction site;
 - 3. a site plan showing location of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions.
 - 4. a statement of the intended use of the structure and/or development;
 - 5. a statement of the cost of the development including all materials and labor;
 - 6. a statement as to the type of sewage system proposed, if any;
 - 7. specification of dimensions of the proposed structure and/or development;

ITEMS 8 – 11 APPLY ONLY TO NEW CONSTRUCTION AND SUBSTANTIAL IMPROVEMENTS

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

- a. base flood at the proposed site of all new or substantially improved structures, which is determined:
 1. In Zones AE and VE from data contained in the “Flood Insurance Study – Town of Southwest Harbor”; or,
 2. In Zone A
 - a. from any base flood elevation data from federal, state or other technical sources (such as FEMA’s Quick-2 model, FEMA 265/July 1995), including information obtained pursuant to SECTIONS IV.K. and VII.D.
 - b. from the contour elevation extrapolated from a best fit analysis of the floodplain boundary when overlaid onto USGS Quadrangle Map or other topographic map prepared by a Professional Land Surveyor or registered professional engineer, if the floodplain boundary has a significant correlation to the elevation contour line(s); or, in the absence of all other data.
 - c. to be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building.
 - b. highest and lowest grades at the site adjacent to the walls of the proposed building;
 - c. lowest floor, including basement (state if such structures contain a basement); and
 - d. level, in the case of non-residential structures only, to which the structure will be flood-proofed.
9. A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in SECTION IV.
 10. A written certification by a Professional Land Surveyor, registered professional engineer or architect, that the base flood elevation and grade elevations shown on the application are accurate.
 11. The following certifications as required in Section IV by a registered professional engineer or architect:
 - a. A Flood-proofing Certificate (FEMA Form 81-65, 01/97, as amended), to verify that the flood-roofing methods for any non-residential structures will meet the flood-proofing criteria of B.8.d above, Section IV.G., and other applicable standards in Section IV;
 - b. A V-Zone Certificate to verify that the construction in coastal high hazard area VE will meet the criteria of Section IV.P. and other applicable standards in Section IV.
 - c. A Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Section IV.L.2.a.;
 - d. a certified statement that bridges will meet the standards of Section IV.M.; and

- e. a certified statement that containment walls will meet the standards of Section IV.N.
 - 12. a description of the extent to which any water course will be altered or relocated as a result of the proposed development; and
 - 13. a statement of construction plans describing in detail how each applicable development standard in Section VI will be met.
- C. Review Authority:
- 1. The Code Enforcement Officer (CEO) shall review all applications except the following:
 - 2. The Planning Board shall review all other applications for subdivisions and other developments as defined in Section VII of this ordinance, as well as storage, lobster or fishing sheds located seaward of mean high tide.
 - 3. The CEO may request the advice and concurrence of the Planning Board on any application which raises unusual questions, and shall refer any application to the Board for decision, which in the CEO's judgment requires a Public Hearing or otherwise requires action by the Planning Board.
- D. Application Fee and Expert's Fee:
- 1. A non-refundable application fee of \$20.00 shall be paid to the Town of Southwest Harbor and a copy of a receipt for the same shall accompany the application.
 - 2. An additional fee may be charged if the Planning Board, CEO, and/or Board of Appeals need the assistance of a professional engineer or other expert. The expert's fee shall be paid in full by the applicant within 10 days after the Town submits a bill to the applicant. Failure to pay the bill shall constitute a violation of the Ordinance and be grounds for the issuance of a stop work order. An expert shall not be hired by the Town at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject. An applicant who is dissatisfied with a decision to hire expert assistance may appeal that decision to the Board of Appeals.
- E. Flood-hazard Permit:
- A flood –hazard permit is valid for 180 days (approximately 6 months). The applicant must reapply for a new permit if construction has not started.

SECTION III. PROCEDURE TO REVIEW

The Planning Board and CEO Shall:

- A. Review all applications to assure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of SECTION IV (Development Standards), have been, or will be met;
- B. Utilize the base flood data contained in the "Floor Insurance Study – Town of Southwest Harbor." In special flood hazard areas where base flood elevation data are not provided, the Planning Board or CEO shall obtain, review and reasonably utilize any base flood elevation and floodway data from federal, state or other technical sources, including information obtained pursuant to this Ordinance. When a base flood elevation in Zone A is established by methods outlined in SECTION II.8.a.2), this information shall be submitted to the Maine Floodplain Management Program in the State Planning Office.
- C. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in SECTION I;

- D. Determine that all necessary permits have been obtained from those federal, state and local government agencies from which prior approval is required by federal or State law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334;
- E. Notify adjacent municipalities, the Department of Environmental protection and the Maine State Office of Community Development prior to any alteration or relocation of a water course and submit copies of such notifications to the Federal Emergency management Agency;
- F. If the application satisfies the requirements of this Ordinance, approve the issuance of one of the following Flood Hazard Development Permits based on the type of development:
 - 1. A two-part Flood Hazard Development Permit for elevated structures.
 - a. Part 1 shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the CEO with a second Elevation Certificate completed by a professional land Surveyor, registered professional engineer or architect based on the part 1 permit construction, "as built", for verifying compliance with the elevation requirements of SECTION IV.F, G, H or P.
 - b. Following review of the Elevation Certificate data, which shall take place within 72 hours of receipt of the application, the CEO shall issue Part II of the Flood Hazard Development permit. Part II shall authorize the applicant to complete the construction project; or
 - 2. A Flood Hazard Development Permit for Floodproofing of Non-Residential Structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the floodproofing standards of SECTION IV.G.A. The application for this permit shall include a Floodproofing Certificate signed by a registered professional engineer or architect; or,
 - 3. A Flood Hazard Development Permit for minor Development for all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. Minor development also includes, but is not limited to: accessory structures as provided for in SECTION IV.J., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and no-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

For development that requires review and approval as a Conditional Use, as provided for in this Ordinance, the Flood Hazard Development Permit Application shall be acted upon by the Planning Board as required in Section V.
- G. Maintain, as a permanent record, copies of all Flood Hazard Development Applications, corresponding Permits issued, and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of SECTION VIII of this Ordinance, and copies of Elevation Certificates, Floodproofing Certificates, Certificates of Compliance and certifications of design standards as required under SECTIONS II, IV, & VI of t his Ordinance.

SECTION IV. DEVELOPMENT STANDARDS

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

- A. All development – All development shall:
 - 1. be designed or modified and adequately anchored to prevent flotation, (excluding piers and docks) collapse or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
 - 2. use construction materials that are resistant to flood damage;
 - 3. use construction methods and practices that will minimize flood damage; and
 - 4. use electrical, heating, ventilation, plumbing and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- B. Water Supply – All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- C. Sanitary Sewage Systems – All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.
- D. On Site Waste Disposal Systems – On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- E. Watercourse Carrying Capacity – All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the water course.
- F. Residential – New construction or substantial improvement of any residential structure located within:
 - 1. Zone AC shall have the lowest floor (including basement) elevated to at least one foot (1') above the base flood elevation.
 - 2. Zone A shall have the lowest floor (including basement) elevated to at least one foot (1') above the base flood elevation utilizing information obtained pursuant to this Ordinance. SECTIONS II.B.8.a.2); III.B; & VII.D;
 - 3. Zone VE shall meet the requirements below of Coastal Floodplain, paragraph P.
- G. Non-Residential – New construction or substantial improvement of any non-residential structure located within:
 - 1. Zone AE shall have the lowest floor (including basement) elevated to at least 1' above the base flood elevation, or together with attendant utility and sanitary facilities shall:
 - a. be flood proofed to at least one foot (1') above the base flood level so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;
 - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
 - c. be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development permit, as required by SECTION II.B.11 and shall include a record of the elevation above mean sea level to which the structure is floodproofed.

2. Zone A shall have the lowest floor (including basement) elevated to at least one foot (1') above the base flood elevation utilizing information obtained pursuant to this Ordinance in SECTIONS II.B.8.a.2); III.B., & VII.D, or together with attendant utility and sanitary facilities meet the floodproofing standards of paragraph 1, above.
3. Zone VE shall meet the requirements below of Coastal Floodplain, in paragraph P.

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

1. Zone AE shall:
 - a. be elevated on a permanent foundation such that the lowest floor (including basement) of the manufactured home is at least one foot (1') above the base flood elevation;
 - b. be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and
 - c. be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to:
 1. over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties, per side at intermediate points (manufactured homes less than 50' long require one additional tie per side); or by
 2. frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50' long required four additional ties per side).
 3. all components of the anchoring system described above shall be capable of carrying a force of 4,800 pounds.
2. Zone A shall:
 - a. be elevated on a permanent foundation, as described above in para. #1b, such that the lowest floor (including basement) of the manufactured home is at least one foot (1') above the base flood elevation utilizing information obtained pursuant to this ordinance, SECTIONS II.B.8.a.2); III.B., & VII.D.; and
 - b. meet the requirements of paragraph 1c above.
3. Zone VE shall meet the requirements below of Coastal Floodplain in paragraph P.

I. Recreational Vehicles – Recreational Vehicles located within:

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

2. Zone VE shall meet the requirements of either 1.a. or 1.b. above or SECTION IV.P.

J. Accessory Structures - Accessory Structures, as defined in SECTION XIII., DEFINITIONS, page 21, located within Zones AC and A shall be exempt from the elevation criteria required in paragraphs F & G, above, if all other requirements of this SECTION and all the following requirements are met. Accessory Structures shall:

1. be 500 square feet or less and have a value less than \$2000;
2. have unfinished interiors and not be used for human habitation;
3. have hydraulic openings, as specified in paragraph L.2., below, in at least two different walls of the accessory structure.
4. be located outside the floodway;
5. when possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and,
6. have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Special Flood Hazard Area.

K. Floodways (does not apply to Coastal Waters)

1. In Zone AE riverine areas, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway which is designated on the community's "Flood Insurance Rate Map" or unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
2. in Zones AW and A riverine areas, for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:
 - a. will not increase the water surface elevation of the base flood more than one foot (1') at any point within the Town; and
 - b. is consistent with the technical criteria contained in Section 2-7 entitled "Hydraulic Analysis", Flood Insurance Study – Guidelines and Specifications for Study Contractors, (FEMA 37/January 1995, as amended).
3. In Zone AE and A riverine areas for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.

L. Enclosed Areal Below the Lowest Floor

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

1. Enclosed areas are not “basements” as defined in SECTION XIII, Page 21.
2. Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement must either:
 - a. be engineers and certified by a registered professional engineer or architect; or
 - b. meet or exceed the following minimum criteria:
 1. a minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;
 2. the bottom of all openings shall be below the base flood elevation and no higher than one foot (1’) above the lowest grade; and
 3. openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means.
3. The enclosed area shall not be used for human habitation; and
4. The enclosed areas are usable solely for building access, parking of vehicles, or storage

M. Bridges –

New construction or substantial improvement of any bridge located within Zones AE, A and VE shall be designed such that:

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

N. Containment Walls –

New construction or substantial improvement of any containment wall located within Zones AE, A, and VE shall:

1. have the containment wall elevated to at least one foot (1’) above the base flood elevation;
2. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
3. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by SECTION II.B.11.

O. Wharves, Piers and Docks –

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

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

P. Coastal Floodplains-

1. All new construction located within Zones AE, A, and VE shall be located landward of the reach of mean high tide except as provided in paragraph 6. below.
2. New construction or substantial improvement of any structure located within Zone VE shall:
 - a. be elevated on posts or columns such that:
 1. the bottom of the lowest structural member of the lowest floor (excluding the pilings or columns) is elevated to one foot (1') above the base flood elevation;
 2. the pile or column foundation and the elevated portion of the structure attached hereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components; and
 3. water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state and local building standards.
 - b. have the space below the lowest floor:
 1. free of obstructions; or
 2. constructed with open wood lattice-work, or insect screening intended to collapse under wind and water without causing collapse, displacement or other structural damage to the elevated portion of the building or supporting piles or columns; or
 3. constructed with non-supporting breakaway walls which have a design safe loading resistance of not less than 10 or more than 20 pounds per square foot.
 - c. require a registered professional engineer or architect to:
 1. develop or review the structural design, specifications and plans for the construction, which must meet or exceed the technical criteria contained in the Coastal Construction Manual, (FEMA-55/February, 1986); and
 2. certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the criteria of this paragraph 2. above.
3. The use of fill for structural support in Zone VE is prohibited.
4. The enclosed areas may be used solely for parking vehicles, building access and storage.

5. Human alteration of sand dunes within Zone VE is prohibited unless it can be demonstrated that such alterations will not increase potential flood damage. (The only sand dune site in Zone VE in Southwest Harbor is in the Cove on Map 10 Lot 1)
6. Conditional Use – Lobster sheds and fishing sheds may be located seaward of mean high tide and shall be exempt from the elevation requirement in this SECTION IV.G. only if permitted as a Conditional Use following review and approval by the Planning Board, as provided in SECTION V. and if all the following requirements and those in the above paragraphs A, K, & L. are met:
 - a. The conditional use shall be limited to low value structures such as metal or wood sheds 200 square feet or less and shall not exceed more than one story.
 - b. The structure shall be securely anchored to the wharf or pier to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.
 - c. The structure will not adversely increase wave or debris impact forces affecting nearby buildings.
 - d. The structure shall have unfinished interiors and shall not be used for human habitation.
 - e. Any mechanical, utility equipment and fuel storage tanks must be anchored and either elevated or floodproofed to one foot (1') above the base flood elevation.
 - f. All electrical outlets shall be ground fault interrupt type. The electrical service disconnect shall be located on shore above the base flood elevation and when possible outside the Special Flood Hazard Area.

SECTION V. CONDITIONAL USE REVIEW

The Planning Board shall hear and decide upon applications for conditional uses provided for in this Ordinance. The Planning board shall hear and approve, approve with conditions, or disapprove all applications for conditional uses. An applicant informed by the Planner or CEO that a Conditional Use Permit is required shall file an application for the permit with the Planning Board.

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

1. The Flood Hazard Development permit Application with additional information attached addressing how each of the conditional use criteria specified in the ordinance will be satisfied, may serve as the permit application for the Conditional Use Permit.
2. Before deciding any application, the Planning Board shall hold a public hearing on the application within thirty days (30) of their receipt of the application.
3. If the Planning Board finds that the application satisfies all relevant requirements of the Ordinance, the Planning Board must approve the application or approve with conditions within 45 days of the date of the public hearing.
4. A Conditional Use Permit issued under the provisions of this Ordinance shall expire if the work or change involved is not commenced within 180 days of the approval of the permit application by the Planning Board.
5. The applicant shall be notified by the Planning Board in writing over the signature of the Chairman of the Planning Board that flood insurance is not available for structures located entirely over water or seaward of mean high tide.

B. Expansion of Conditional Uses

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

SECTION VI. CERTIFICATE OF COMPLIANCE

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

- A. For New Construction or Substantial Improvement of any elevated structure the applicant shall submit to the CEO:
1. an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer, or architect, for compliance with SECTION IV. F, G, H, or P; and
 2. for structures in Zone VE, certification by a registered professional engineer or architect that the design and methods of construction used are in compliance with SECTION IV. P.2,
- B. The applicant shall submit written notification to the CEO that the development is complete and complies with the provisions of this Ordinance.
- C. Within ten (10) working days, the Code Enforcement Officer shall:
1. review the request certificate(s) and the applicant's written notification; and,
 2. upon determination that the development conforms with the provisions of this Ordinance, issue a Certificate of Compliance.

SECTION VII: REVIEW OF SUBDIVISION AND DEVELOPMENT PROPOSALS

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

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

deed or any other document previously described. The construction requirement shall also be clearly stated on any map, plat or plan to be signed by the Planning Board or local reviewing authority as part of the approval process.

SECTION VIII: APPEALS AND VARIANCES

The Board of Appeals of the Town of Southwest Harbor may, upon written application of an aggrieved party, hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the planning Board or the CEO in the administration of the provisions of this Ordinance.

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

- A. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- B. Variances shall be granted only upon:
 - 1. a showing of good and sufficient cause; and
 - 2. a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense or create nuisances, cause fraud or victimization of the public or conflict with existing local laws and ordinances; and
 - 3. a showing that the existence of the variances will not cause a conflict with other state, federal or local laws and ordinances; and
 - 4. a determination that failure to grant the variances would result in “undue hardship,” which in this sub-section is as defined in the Ordinance of the Southwest Harbor Board of Appeals.
- C. Variances shall only be issued upon a determination that the variance is the minimum necessary considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as it deems necessary.
- D. Variances may be issued for new construction, substantial improvements or other development for the conduct of a functionally dependent use provided that:
 - 1. the other criteria of this section and SECTION IV.K. are met; and
 - 2. the structure or other development is protected by methods that minimize flood damage during the base flood and create no additional threat to public safety.
- E. Variances may be issued for the reconstruction, rehabilitation or restoration of Historic Structures upon the determination that:
 - 1. the development meets all of the criteria of paragraphs A – D, above; and,
 - 2. the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure’s continued designation as Historic Structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- F. Any applicant who meets the above criteria shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:
 - 1. the issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25.00 per \$100.00 of insurance coverage;
 - 2. such construction below the base flood level increases risks to life and property; and

3. the applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the Town against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the Town from any claims the applicant may have against the Town that are related to the use of land located in the floodplain.

G. Appeal Procedure for Administrative and Variance Appeals

1. An administrative or variance appeal may be taken to the board of Appeals by an aggrieved party within thirty (30) days after receipt of a written decision of the Code Enforcement Officer or Planning Board.
2. Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
3. The Board of Appeals shall meet to determine a public hearing date on the completed application within thirty-five (35) days of its receipt of the appeal request.
4. The person filing the appeal shall have the burden of proof.
5. The Board of Appeals shall decide all appeals within thirty-five (35) after the close of the hearing, and shall issue a written decision on all appeals.
6. The Board of Appeals shall submit to the Planning Board a report of all variance actions, including justification for the granting of the variance and an authorization for the Planning Board or CEO to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.
7. Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may taken an appeal to Superior Court in accordance with State laws within forty-five (45) days from the date of any decision of the Board of Appeals.

SECTION IX: ENFORCEMENT AND PENALTIES

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

SECTION X. VALIDITY AND SEVERABILITY

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

SECTION XI. CONFLICT WITH OTHER ORDINANCES

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

SECTION XII. ABROGATION

This Ordinance repeals and replaces the FLOODPLAIN MANAGEMENT ORDINANCE FOR THE TOWN OF SOUTHWEST HARBOR, enacted 1977.

SECTION XIII. DEFINITIONS

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

ACCESSORY STRUCTURE – a small detached structure that is incidental and subordinate to the principle structure

ADJACENT GRADE – the natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

AREA OF SPECIAL FLOOD HAZARD – the land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the “Flood Insurance Study” - Town of Southwest Harbor”.

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

BASEMENT – any area of the building having its floor subgrade (below ground level) on all sides.

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

BUILDING – see STRUCTURE

CERTIFICATE OF COMPLIANCE – a document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of this Ordinance.

COASTAL HIGH HAZARD AREA – the area subject to high velocity waters, including but not limited to hurricane wave wash or tsunamis. The area is designated on a FIRM as Zone VE.

CODE ENFORCEMENT OFFICER – any person or board responsible for performing the inspection, licensing and enforcement duties required by a particular statute or Ordinance.

CONDITIONAL USE – a use that because of its potential impact on surrounding areas and structures, is permitted only upon review and approval by the Planning Board pursuant to SECTION V.

COST OF A STRUCTURE – includes all material and labor costs, but does not include the costs of plans, specifications, and permits. If the materials or servicing equipment are donated or discounted below normal market values, the value shall be adjusted to an amount equivalent to that estimated through normal transaction. Where no-reimbursed labor is involved, the value of the labor shall be

estimated based on applicable minimum-hour wage scales for the type of construction work that is done. The adjustments and estimates shall be made by the local permit official based on his professional judgment and knowledge of the local or regional cost of construction materials and servicing equipment and of the local or regional wage scale for various types of construction work.

DEVELOPMENT – any change caused by individuals or entities to improve or unimproved real estate, including but not limited to the construction of buildings or other structures; the construction of additions or substantial improvements to buildings or other structures; mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials; and the storage, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities.

ELEVATED BUILDING- a non-basement building:

1. built, in the case of a building in Zones AE or A to have the top of the elevated floor, or in the case of a building in Zone VE, to have the bottom of the lowest horizontal structural member of the elevated floor, elevated above the ground level by means of pilings, columns, post, piers, or “stilts”, and
2. adequately anchored so as not to impair the structural integrity of the building during a flood of up to one foot (1’) above the magnitude of the base flood.

In the case of Zones AC or A, ELEVATED BUILDING also includes a building elevated by means of fill or solid foundation perimeter walls less than 3’ in height with hydraulic openings sufficient to facilitate the unimpeded movement of flood waters, as required in SECTION IV. L. In the case of Zone VE,

ELEVATED BUILDING also includes a building otherwise meeting the definition of elevated building, even though the lower area is enclosed by means of breakaway walls, if the breakaway walls meet the standards of SECTION IV.P.2.b.3).

ELEVATION CERTIFICATE – an official form (FEMA Form 81-31, 08/99, as amended) that

1. is used to verify compliance with the floodplain management regulations of the National Flood insurance program (NFIP); and,
2. is required as a condition for purchasing flood insurance.

FLOOD OR FLOODING –

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

FLOOD ELEVATION STUDY – an examination, evaluation and determination of flood hazards and corresponding water surface elevations.

FLOOD INSURANCE RATE MAAP (FIRM) – an official map of the Town of Southwest Harbor, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY – see FLOOD ELEVATION STUDY

FLOODPLAIN OR FLOOD-PRONE AREA – any land area susceptible to being inundated by water from any source (see definition of FLOODING).

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

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

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

FLOODWAY – see REGULATORY FLOODWAY

FLOODWAY ENCROACHMENT LINES – the lines marking the limits of floodways on federal, state and local floodplain maps.

FOOTPRINT – the area enclosed by the perimeter of a structure

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

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

HISTORIC STRUCTURE- Any structure that is:

1. listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. certified or preliminarily determined by the Secretary of the Interior as contributing to the historic significance of a Registered Historic District or a district preliminarily determined by the Secretary of the interior to qualify as a registered historic district;
3. Individually listed on a State Inventory of Historic Places in States with Historic Preservation Programs which have been approved by the Secretary of the interior; or
4. Individually listed on a Local Inventory of Historic Places in communities with Historic preservation programs that have been certified either by an approved State program as determined by the Secretary of the interior, or directly by the secretary of the Interior in States without approved programs.

LOCALLY ESTABLISHED DATUM – for purposes of this Ordinance, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not reference to the National Geodetic Vertical Datum (NGVD) or any other established datum and is used in areas where mean Seal Level data is too far from a specific site to be practically used.

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

Zone AE & A – the “floor” measurement is for the top of the sill or floor joists; and
ZONE VE – the “floor” measurement is from the bottom of the floor joists.

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

MANUFACTURED HOME PARK OR SUBDIVISION – a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MARKET VALUE – the estimate shall be determined by a Maine Certified Real Estate Appraiser or Assessor. The appraisal shall be done for the whole property, including land and all structures. This total shall then be broken down into its components. In all cases the market value of a structure pertains only to the structure in question and does not include land, landscaping or detached accessory structures on the property. However, when the structure is on a pier, it does include only that part of the pier beneath the footprint of the structure.

MEAN SEA LEVEL – for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1919, or other datum, to which base flood elevations shown on a Town’s Flood Insurance Rate map are referenced.

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

NATIONAL GEODETIC VERTICAL DATUM (NGVD) – the national vertical datum, whose standard was established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD was based upon mean sea level in 1929 and also has been called “1929 Mean Sea Level (MSL)”.

NEW CONSTRUCTION – structures for which the “start of construction” commenced on or after the effective date of the initial floodplain management regulations adopted by a town and includes any subsequent improvements to such structures.

100-YEAR FLOOD – see BASE FLOOD

RECREATIONAL VEHICLE – a vehicle which is:

1. built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection, not including slideouts;
3. designed to be self-propelled or permanently towable by a motor vehicle; and
4. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

REGULATORY FLOODWAY

1. the channel of a river or other water course and the adjacent land areas that must e reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot (1’)” and
2. When not designated on the community’s Flood Insurance Rate Map or Flood Boundary and Floodway Map, it is considered to be the channel of a river or other water course

and the adjacent land areas to a distance of one-half the width of the flood plain, as measured from the normal high water mark to the upland limit of the floodplain.

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

SPECIAL FLOOD HAZARD AREA – See AREA OF SPECIAL FLOOD HAZARD

START OF CONSTRUCTION – the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, or modification of any construction element, whether or not that alteration affects the external dimensions of the building.

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

SUBSTANTIAL DAMAGE- damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damage condition would equal or exceed 50% of the market value of the structure before damage occurred.

SUBSTANTIAL IMPROVEMENT – any singular or successive reconstruction, repair, rehabilitation, addition or other improvement of a structure, the cumulative cost (value) of which equals or exceeds 50% of the market value of the structure before the “start of construction” of the first improvement project following the effective date of 5/1/91. In determining whether a development project constitutes a substantial improvement the total cost (value) of all reconstructions, repairs, rehabilitations, additions, or other improvements shall be accrued over a period of five (5) years from the time of the first permit application following the effective date. This term includes structures which have incurred substantial damage regardless of the actual repair work performed. The term does not, however include either:

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

VARIANCE – a grant of relief by the Town from the terms of a floodplain management regulation.

VIOLATION – the failure of a structure or other development to fully comply with the Southwest Harbor Floodplain management Ordinance.