

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – APRIL 3, 2024
JOINT WORKSHOP WITH BOARD OF EDUCATION
RE; FY2025 MUNICIPAL BUDGET – 5:30 P.M.
HYBRID REGULAR MEETING – 7:00 P.M.

TO VIEW TOWN COUNCIL MEETING & OFFER PUBLIC COMMENT:

<https://scarboroughmaine.zoom.us/j/84717936177>

TO VIEW TOWN COUNCIL MEETING ONLY:

<https://www.youtube.com/channel/UCD5Y8CFy5HpXMftV3xX73aw>

NO NEW BUSINESS SHALL BE TAKEN UP AFTER 10:00 P.M.

- Item 1.** Call to Order.
- Item 2.** Pledge of Allegiance.
- Item 3.** Roll Call.
- Item 4.** General Public Comments.
- Item 5.** Minutes: March 20, 2024 - Town Council Meeting.
- Item 6.** Adjustment to the Agenda.
- Item 7.** Items to be signed: a. Treasurer's Warrants.
- Item 8.** Town Manager Report.

***Procedure for Addressing Council [Councilor Chair will explain process]**

Order No. 24-027, 7:00 p.m. Public hearing and second reading on the proposed amendments to Chapter 311: the Town of Scarborough Schedule of License, Permit and Application Fees. *[Town Staff]*

Order No. 24-028, 7:00 p.m. Public hearing and second reading on the new requests for a Cannabis Establishment License from Sola Edibles d/b/a Dose Maine, LLC, located at 71 Pleasant Hill Road, Unit C for a Medical Cannabis Products Manufacturing Facility and Sola Edibles d/b/a Solift, LLC, located at 71 Pleasant Hill Road, Unit C for an Adult Cannabis Products Manufacturing Facility. *[Assistant Town Manager]*

Order No. 24-032, 7:00 P.M. Public hearing and action on following new licenses:

- Food Handler License: Sola Edibles d/b/a Dose Maine, LLC and Solift, LLC, located at 71 Pleasant Hill Road, Unit C; and,
- Food Handlers License and Liquor License: J & K Lobster, Inc. d/b/a Ken's Place, located at 207 Pine Point Road.

[Town Clerk]

OLD BUSINESS: None at this time.

NEW BUSINESS:

Order No. 24-033. First reading and schedule a public hearing on the proposed FY2025 Municipal/School Budget. *[Town Manager/Superintendent of Schools]*

Order No. 24-034. First reading and schedule a public hearing and second reading on the proposed amended Chapter 421, the Town of Scarborough Authorization of Outdoor Services Ordinance, amending the applicable time period for May 31, 2024 through October 31, 2024. *[Planning Director]*

Order No. 24-035. First reading and refer to the Planning Board, the proposed repeal and replacement of Chapter 405A Floodplain Management Ordinance as required to maintain standing in the National Flood Insurance Program (NFIP) and to recognize the areas of special flood hazard, Zones A, AE, and VE for the Town of Scarborough, Cumberland County, Maine, identified by the Federal Emergency Management Agency in a report entitled “Flood Insurance Study – Cumberland County, Maine” dated June 20, 2024, with accompanying “Flood Insurance Rate Map” dated June 20, 2024, as amended. *[Planning Director]*

Order No. 24-036. First reading and schedule a public hearing to adopt new Chapter 1104B – the Town of Scarborough Commercial Property Assessed Clean Energy Program (C-Pace) and authorize the Town Manager to enter into a Participation Agreement with Efficiency Maine on behalf of the Town of Scarborough. *[Sustainability Coordinator]*

Order No. 24-037. First reading and schedule a second reading, to approve the expenditure, in an amount not to exceed, \$350,000 from the Land Acquisition Reserve Fund for the purpose of purchasing a portion of property located at 162 Spurwink Road, identified by the Scarborough Tax Assessors Map R098/Lot 18, as recommended by the Parks and Conservation Land Board, and authorize the Town Manager, to execute any and all documents as are necessary to protect the Town’s interest. *[Parks and Conservation Land Board]*

Order No. 24-038. Act on the request to move approval on names posted to the various committees/boards, by the Appointments and Negotiations Committee at the March 20, 2024, Town Council meeting. *[Appointments and Negotiations Committee]*

Order No. 24-039. Act on the request to authorize the Town Manager to pursue the sale of Alger Hall to the Historical Society. *[Town Manager]*

Item 9. Non-Action Item.

Item 10. Standing and Special Committee Reports and Liaison Reports.

Item 11. Council Member Comments.

Item 12. Adjournment.



To: Scarborough Town Council
 From: Thomas J. Hall, Town Manager
 RE: Town Manager's Report
 Date: April 3, 2024

Below is an initial list of items that will be included in the Town Manager's Update at the regular public meeting of April 3, 2024. I will provide a verbal update on each of these items and will likely include other items of interest.

- **FY25 Budget Development** -
 - Joint Workshop and First Reading - April 3
 - Finance Committee Review Sessions - April 11 and 12
- **January Storm Damage** -
 - Federal Disaster Declaration issued
 - PSB benign evaluated to serve as FEMA Recovery Center
 - Proceeding with public infrastructure repairs-
 - Higgins Beach work- out to bid, complete by Memorial Day
 - Black Point Road- Identifying regulatory requirements
- **Ice Storm Damage** -
 - Tree damage town-wide
 - Town to removal debris within Town right-of-way- efforts underway
- **Short-Term Rental** -
 - Ordinance development- focus on registration only
 - Town Council Workshop on June 5
 - Implementation targeted for January 2025
- **Eastern Trail - Close The Gap** -
 - Continue to work on CSX access - drafting of Aerial Easement
 - Successful meetings with DEP and ACOE on permitting
 - Bid Solicitation expected May/June 2024
- **Gorham Connector** - To provide leadership on public phase
 - First public meeting on March 25, 2024
 - 300+ in attendance
 - Impact on Smiling Hill Farm big focus
- **Alger Hall** -
 - Pursuing Historical Society purchase- Authorization to proceed with the sale
 - Real Estate Disposition Policy

- **380 Payne Road** - Dangerous Building/property clean-up
 - Storage container secured
 - Proceeding with Notice of Violation on trash/debris
 - Met with landowner regarding violation- expect compliance
- **Community Center Open House** -
 - April 24 from 3 to 7 PM at Wentworth School
 - Public feedback to Ad-Hoc Committee's efforts



AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – APRIL 3, 2024
HYBRID REGULAR MEETING – 7:00 P.M.

Order No. 24-027. Move approval of the second reading on the proposed amendments to Chapter 311: the Town of Scarborough Schedule of License, Permit and Application Fees.
[Town Staff]

Town Staff

Ought to Pass

Sponsor

Recommendation

03/20/2024 – Vote: 7 Yeas.

First Reading/Vote

04/03/2024

Public Hearing

04/03/2024 – Vote:

Second Reading/Final Approval/Vote

Scarborough Town Council Meeting

Council Meeting Date: April 3, 2024

ACTION ITEM: Order No. 24-027.

SUBJECT:

7:00 p.m. Public hearing and second reading on the proposed amendments to Chapter 311: the Town of Scarborough Schedule of License, Permit and Application Fees. *[Town Staff]*

PURPOSE:

To make adjustments to certain fees as deem necessary.

BACKGROUND:

Traffic – Towing Fees: These fees have not increased since May of 2012. The cost of doing business, training, hiring, maintenance of equipment and gas prices are a few reasons that this request is coming forward.

Mooring Fees - Mooring Waiting List, Yearly Fee:

This fee was tabled and sent to the Coastal Waters & Harbor Advisory Committee for review and to be brought back to the Town Council upon their review and recommendation.

Miscellaneous Fees:

Over the course of the last year, more and more businesses are consistently failing to renew their licenses in a timely manner. This is causing additional administrative time for the Town Clerk's office and for the Zoning Administrator and additional postage for certified notices. The goal is to reduce late license renewals across the board, cover costs associated with late renewals and to hold the applicants accountable.

FISCAL IMPACT: Unknown at this time.

STATUS / PROCESS TO DATE:

- Recommendation on Towing Fees: February 6, 2024
- Recommendation on Mooring Wait List Fee: February 8, 2024 - February 14, 2024 [Item tabled at the March 20th Meeting]
- Recommendation on Miscellaneous Late Fee: February 22., 2024
- First reading before the Town Council: March 20, 2024
- Public hearing/second reading on the Towing Fees and Miscellaneous Fees before the Town Council: April 3, 2024

PROPOSED ACTION: Recommend move approval of the second reading on Order No. 24-029 relating to the Towing Fees and the Miscellaneous Fees.

ATTACHMENTS:

- Memo from Lt. Vaughn regarding the Towing Fees.

**CHAPTER 311
TOWN OF SCARBOROUGH
SCHEDULE OF LICENSE, PERMIT AND APPLICATION FEES**

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following amendments to Chapter 311 - the Town of Scarborough Schedule of License, Permit and Application Fees, be and hereby is amended, as follows (additions are underlined; deletions are struck through):

Chapter 601 – Traffic Ordinance [amended 05/02/2012]	<u>Fee</u>
Section 26 – Penalties General (05/03-2006)	
Fine for any violation of this ordinance is:	\$80.00
If paid within 30-days of issuance of the ticket the fine is reduced to:	\$40.00
Section 27 – Illegally Parked Vehicles (05/03-2006)	
Fine for illegally parked vehicle, except handicapped parking violation is:	\$80.00
If paid within 30-days of issuance of the ticket parking fine is reduced to:	\$40.00
Fine for parked vehicle violating handicapped parking is:	\$120.00
If paid within 30-days of issuance of the ticket parking fine is reduced to:	\$60.00
Section 30 – Towing Rate Schedule -	
Service Call - Gas, Jumpstarts, lockouts, tire change, etc. Range [amended 06/02/2021]	\$50.00 <u>\$75.00</u>
Vehicle Storage, per day, INCLUDING non-business days (amended 05/07/2014; amended 06/02/2021)	\$50.00
Call out fee, to come to shop during non-business hours (amended 05/07/2014; amended 06/02/2021)	\$50.00
<u>EV Vehicle Storage, per day, INCLUDING non-business days</u>	<u>\$100.00</u>
Vehicle Tow	
Day (amended 05/07/2014; amended 06/02/2021)	\$105.00
<u>Non-Crash Tow (Day)</u>	<u>\$130.00</u>
Night (amended 05/07/2014; amended 06/02/2021)	\$115.00
<u>Non-Crash Tow (Night)</u>	<u>\$135.00</u>
<u>Crash Tow (Day)</u>	<u>\$150.00</u>
<u>Crash Tow (Night)</u>	<u>\$150.00</u>
Snow Tow—Range	
Day (amended 05/07/2014; amended 06/02/2021)	\$115.00
Night (amended 05/07/2014; amended 06/02/2021)	\$125.00
<u>Hook up/drop (Day)</u>	<u>\$25.00</u>
<u>Hook up/drop (Night)</u>	<u>\$25.00</u>
Vehicle Tow w/dollies—Range (amended 05/07/2014)	\$80 to \$100
Motorcycle Tow – Same as vehicle due to special equipment	<u>\$25.00</u>
Pull out (amended 06/02/2021)	-\$85.00
<u>Recovery</u>	
<u>Pull Out Only (Day)</u>	<u>\$130.00</u>
<u>Pull Out Only (Night)</u>	<u>\$135.00</u>
Pull Out Plus Tow – Flat Fee Day or Night	<u>\$200.00</u>
Recovery—Same as tow, depending on time of day: After first hour \$70 per additional hour plus any special equipment, i.e., bulldozer, etc.	
Definition of Hours – Daytime Hours = 0700 to 1800 hours Night Time Hours = 1800 to 0700 hours	

Miscellaneous Fees (adopted 05/03/05) (amended 02/15/06)	Fee
Marriage Ceremonies Performed (amended 02/15/06)	\$50.00
Miscellaneous Administrative Fees – Town Clerk’s Office (amended 05/06/09; 05/03/2023)	\$25.00
Replacement Fee for all Applications and Licenses/Permits (adopted 05/04/2011; amended 05/03/2023)	\$10.00
Genealogy / Research – \$3.00 per name, whether or not a record is found, this includes a photocopy. For an attested copy, the fee is as set by the State of Maine Office of Vital Records.	
Dog License Late Fee – Upon receipt of the rabies certificate(s) from the State of Maine the Town Clerk’s Office will notify owner(s) they need to register their dog(s) within 10-days. If a resident fails to license their dog(s) within 10-days of notification from the Town Clerk’s Office a late fee will be charged for each dog. (05/21/2008) (amended 05/07/2014)	\$25.00 per dog
Non-sufficient Funds (adopted 05/07/2014)	\$30.00
<u>Late fee on all renewal applications issued by the Town Clerk’s Office that are received after the deadline.</u>	<u>½ half the application fee</u>
<u>If more than 30 days late after deadline</u>	<u>Full application fee.</u>

Scarborough Police Department

Memorandum

To: Assistant Town Manager Liam Gallagher

From: Lieutenant Scott Vaughan

Date: Tuesday February 6, 2024

Ref: Request to Increase Town Wrecker Fee Ordinance

CC:

Assistant Town Manager Liam Gallagher,

I would like to increase the wrecker fee agreement the Town of Scarborough has in place for the towing and removal of vehicles within the Town of Scarborough for business operations and traffic safety. These rates have not increased since May 2, 2012. As you are aware, the cost of doing business to include training, hiring, maintenance of equipment and gas prices are just a few reasons that this request has come forward. I met with the representatives of these wrecker companies in March of 2023 to put forth a request to the Town to have these rates increased. One of these representatives, Scott Hatch of Southern Maine Towing is the President of the Towing & Recovery Association of Maine. Scott has worked with me to prepare what I believe is a reasonable request for increases.

Please see the attached document that includes what our current fees are and what the request for the increased cost is as well.

Respectfully,



Lieutenant Scott Vaughan

Abandoned vehicles are on the rise. When a vehicle is towed, wrecker companies are not recouping the tow/storage fees due to the owner not returning to pay for it. This is especially true when the vehicle is totalled and more equipment was needed to tow

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – APRIL 3, 2024
HYBRID REGULAR MEETING – 7:00 P.M.

Order No. 24-028. Move approval of the second reading on the new requests for a Cannabis Establishment License from Sola Edibles d/b/a Dose Maine, LLC, located at 71 Pleasant Hill Road, Unit C for a Medical Cannabis Products Manufacturing Facility and Sola Edibles d/b/a Solift, LLC, located at 71 Pleasant Hill Road, Unit C for an Adult Cannabis Products Manufacturing Facility. *[Assistant Town Manager]*

Assistant Town Manager

Ought to Pass

Sponsor

Recommendation

03/20/2024 – Vote: 6 Yeas. 1 Nay [Councilor Hamill]

First Reading/Vote

04/03/2024

Public Hearing

04/03/2024 – Vote:

Second Reading/Final Approval/Vote

Scarborough Town Council Meeting

Council Meeting Date: April 3, 2024

ACTION ITEM: Order No. 24-028.

SUBJECT:

7:00 p.m. Public hearing and second reading on the new requests for a Cannabis Establishment License from Sola Edibles d/b/a Dose Maine, LLC, located at 71 Pleasant Hill Road, Unit C for a Medical Cannabis Products Manufacturing Facility and Sola Edibles d/b/a Solift, LLC, located at 71 Pleasant Hill Road, Unit C for an Adult Cannabis Products Manufacturing Facility.
[Assistant Town Manager]

PURPOSE:

Approve two Adult Cannabis Products Manufacturing licenses for the establishments listed above.

BACKGROUND:

Application has been received and reviewed. The applicants plan is to use this space for packaging. The inspection was conducted and a few minor changes are pending. The Zoning Administrator noted there were a few code compliance issues, but did not believe that they were to the level of pulling the application from Council approval and not issue the CO (or the license) until compliance has been achieved.

FISCAL IMPACT:

\$2,850.00 (application and license fee)

STATUS / PROCESS TO DATE:

- Application received
- Inspection was conducted
- First reading before Town Council: March 20, 2024
- Public hearing/second reading before the Town Council: April 3, 2024

PROPOSED ACTION:

Recommend approval of the second reading of Order No. 24-028, with the condition that the licenses not be issued until the CO is ready to be issued.

ATTACHMENTS:

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – APRIL 3, 2024
HYBRID REGULAR MEETING – 7:00 P.M.

Order No. 24-032. Move approval on following new licenses:

- Food Handler License: Sola Edibles d/b/a Dose Maine, LLC and Solift, LLC, located at 71 Pleasant Hill Road, Unit C; and,
- Food Handlers License and Liquor License: J & K Lobster, Inc. d/b/a Ken’s Place, located at 207 Pine Point Road.

[Town Clerk]

Town Clerk

Ought to Pass

Sponsor

Recommendation

04/03/2024 – Vote:

First Reading/Vote

04/03/2024

Public Hearing

N/A

Second Reading/Final Approval/Vote

Scarborough Town Council Meeting

Council Meeting Date: April 3, 2024

ACTION ITEM: Order No. 24-032.

SUBJECT:

7:00 P.M. Public hearing and action on following new licenses:

- Food Handler License: Sola Edibles d/b/a Dose Maine, LLC and Solift, LLC, located at 71 Pleasant Hill Road, Unit C; and,
- Food Handlers License and Liquor License: J & K Lobster, Inc. d/b/a Ken's Place, located at 207 Pine Point Road.

[Town Clerk]

PURPOSE:

To allow the applicants to conduct business according to the licenses requested and the Ordinances of the Town of Scarborough.

BACKGROUND:

The first request is a new establishment requiring a new Food Handlers License and the second request is a change in ownership, which also requires new licenses, as the current licenses are no-transferable.

FISCAL IMPACT:

\$220.00 license fee for each of the Food Handlers and \$25 Processing Fee for Liquor License.

STATUS / PROCESS TO DATE:

- Application received in the Town Clerk's Office: January 23, 2024
- Public Hearing notice provided in newspaper: Wednesday, March 27, 2024
- Public Hearing and Action: April 3, 2024

PROPOSED ACTION:

Recommend approval of Order No. 24-032.

ATTACHMENTS:

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – APRIL 3, 2024
HYBRID REGULAR MEETING – 7:00 P.M.

Order No. 24-033. Move approval of the first reading and schedule a public hearing on the proposed FY2025 Municipal/School Budget. *[Town Manager/Superintendent of Schools]*

Town Manager/Superintendent of Schools

Ought to Pass

Sponsor

Recommendation

04/03/2024 – Vote:

First Reading/Vote

05/01/2024

Public Hearing

05/15/2024 – Vote:

Second Reading/Final Approval/Vote

Scarborough Town Council Meeting

Council Meeting Date: April 3, 2024

ACTION ITEM: Order No. 24-033.
SUBJECT: First reading and schedule a public hearing on the proposed FY2025 Municipal/School Budget . <i>[Town Manager/Superintendent of Schools]</i>
PURPOSE: To approve a new budget for FY2025 for the new year to meet the needs of the municipality
BACKGROUND: In accordance with Article V, Section 502 of the Charter, the Town Manager submitted a budget for Fiscal Year 2025 to the Town Council for their consideration. The Town Finance Committee will conduct a complete and thorough review of the proposed budget and could recommend certain adjustments to the proposed budget. Such adjustments will be offered in the second and final reading.
FISCAL IMPACT:
STATUS / PROCESS TO DATE: <ul style="list-style-type: none">• Proposed FY2025 Budget Presentation by the Town Manager and School Superintendent: March 27, 2024• Joint Council/BOE Workshop: April 3, 2024• First reading before the Town Council: April 3, 2024
PROPOSED ACTION: Move approval of the first reading on Order No. 24-033, the proposed FY25 Municipal/School Budgets and schedule the public hearing for Wednesday, May 1, 2024.
ATTACHMENTS: <ul style="list-style-type: none">• Proposed Budget Order.

Budget Order for Fiscal Year 2025

Be it ordered that the Scarborough Town Council approves the first reading on the FY2025 Budget and **schedules the public hearing for Wednesday, May 1, 2024**, the line item appropriations and expenditures for all offices, agencies and departments of the Town as follows:

SUMMARY MUNICIPAL OPERATING BUDGET 2024	
TOTAL EXECUTIVE	4,627,451
TOTAL HUMAN RESOURCE/GENERAL ASSISTANCE	729,839
TOTAL FINANCE ALL DIVISIONS	1,485,382
TOTAL MUNICIPAL INFORMATION SYSTEMS	2,393,829
TOTAL PLANNING DEPARTMENT ALL DIVISIONS	1,015,913
TOTAL COMMUNITY SERVICES ALL DIVISIONS	3,894,514
TOTAL LIBRARY NET – TOWN APPROPRIATION	1,340,938
TOTAL SEDCO	316,078
TOTAL FIRE ALL DIVISIONS	7,611,022
TOTAL POLICE ALL DIVISIONS	8,488,242
TOTAL PUBLIC WORKS ALL DIVISIONS	8,623,246
TOTAL ENGINEERING & TECHNICAL SERVICES	656,237
TOTAL DEBT (Town Only)	5,058,942

Be it further ordered that the Scarborough Town Council hereby appropriates the sum of **\$400,000** for Resident Senior Property Tax Relief as authorized under – Chapter 313 – Property Tax Assistance Ordinance; and,

Be it further ordered that the Scarborough Town Council hereby appropriates, for school purposes, the Education Operating Budget (including school debt), the sum of **\$66,562,878** and the Town of Scarborough raises as the local share for the Education Operating Budget, the sum of **\$56,792,182** and,

Be it further ordered that the Scarborough Town Council hereby appropriates, for school purposes, the Education Adult Education and Food Services, the sum of **\$2,618,550** and the Town of Scarborough raises as the local share for the Education Adult Education and Food Services Budgets, the sum of **\$73,789** and,

Be it further ordered, that the Town Council hereby authorizes the Chairperson of the Town Council to sign the Municipal Expenditure Warrant approving all expenditures paid at the regular meetings of the Town Council and;

Be it further ordered that the Town of Scarborough hereby appropriates the Town's due portion of the County Tax, in the amount of **\$3,342,311** for the period July 1, 2024, through June 30, 2025; and a six-month County Assessment transition of **\$287,875** covering year 2 of 5; and,

Be it further ordered that the Scarborough Town Council hereby approves adding **\$18,346,291** to the Capital Budget and appropriates for Capital purposes, the sum of **\$681,000** for school capital programs and **\$691,000** for town capital; for a total Capital Appropriation of **\$1,372,000** be funded from property taxes.

Be it further ordered that the Town Council hereby authorizes the following utilization of funds from dedicated accounts:

Restricted Fund Balance:

\$1,535,000 from Restricted for Education to reduce the local share of the Education and Adult Ed Operating Budgets
\$1,207,225 from Downtown TIF Account to support Public Safety Building Debt Service
\$316,078 from Downtown TIF Account to support SEDCO operating costs
\$355,610 from Downtown TIF Account to support personnel costs
\$212,000 from Downtown TIF Account to support operating expenses
\$4,000,000 from Grants for repair of Black Point Road

Committed Fund Balance:

\$1,200,000 from Rescue Equipment Reserve to reduce the tax rate
\$443,890 from School Development Impact Fee Account to pay Debt Service for eligible Capital Improvements
\$1,000,000 from Payne Road District 3 account for Mussey Road Intersection Improvements
\$1,005,000 from Downtown TIF Account to pay for eligible Capital Improvements
\$154,000 from the Recreation Fee Account for Hurd Park & Ferry Beach Capital Improvements

Be it further ordered, that the Town Council hereby authorizes the use of **\$985,000** from Unassigned Fund Balance; and,

Be it further ordered that the Total Gross Budget appropriation of **\$144,274,537**, this total less estimated revenues and other credits of **\$56,861,896** result in a Net appropriation of **\$87,412,641**, which shall be raised from taxation. The Scarborough Town Council further fixes **Tuesday, October 15, 2024**, and **Monday, March 17, 2025**, as the dates upon each of which one-half of such tax is due and payable, and pursuant to 36 M.R.S.A. Section 505.4 with interest to accrue upon taxes due and unpaid after each such date at the rate of **8.50%** per annum.

Be it further ordered that the Scarborough Town Council hereby appropriates an estimated **\$500,000** for overlay, which may be adjusted and shall be finally determined by the Town Assessor pursuant to Title 36 MRSA Section 710 within State restrictions; and (such estimated amount is incorporated within the Total Gross Budget as identified within this order); and,

Be it further ordered that the Scarborough Town Council hereby appropriates an estimated **\$4,350,000** for Tax Increment Financing Revenues to be deposited into Tax Increment Financing Development Program Funds, an estimated **\$1,715,000** of which is authorized to be paid pursuant to applicable credit enhancement agreements, both of which amounts may be adjusted and shall be finally determined by Town staff based on actual assessed values and applicable Tax Increment Financing Districts, Development Programs and credit enhancement agreements approved by the Town Council and State Department of Economic and Community Development (such estimated amounts are incorporated within the Total Gross Budget as identified within this order).

Be it further ordered, that in accordance with 36 M.R.S.A Section 506, the Tax Collector/Treasurer is authorized to accept prepayment of taxes not yet committed or prior to any due date and pay no interest thereon. In accordance with 36 M.R.S.A. Section 506-A, a taxpayer who pays an amount in excess of that finally assessed shall be repaid the amount of overpayment plus interest from the date of overpayment at the annual rate of **4.50%**.

Be it further ordered, that the Town Council hereby authorizes the Finance Director and/or Treasurer to withhold monies payable to the Town of Scarborough to cover taxes due pursuant to M.R.S.A. Title 36, Section 905 and to invest funds in accordance with M.R.S.A. Title 30-A, Section 5706; authorizes the Tax Collector to sign on behalf of the Town, the necessary deeds and liens and tax settlements; in accordance with 36 M.R.S.A. Section 906, the Tax Collector and Treasurer are authorized to apply any tax payment received as payment for any property tax against outstanding or delinquent taxes due on that property in chronological order beginning with the oldest unpaid tax bill and processed in the order of liens and fees, interest and then to principal and, after the date of perfection of the tax, the Tax Collector is authorized to discharge any obligation to collect unpaid property taxes in the amount of **\$5.00** or less and remove same from the municipal books, pursuant to 36 M.R.S.A. Section 970-A.

Be it further ordered, that if the 2025 Municipal Budget exceeds the Property Tax Levy Limit for fiscal 2025, pursuant to Title 30-A, Section 5721-A of the Maine Revised Statutes, as amended, it is the intent of the Town Council to increase the commitment to greater than the Property Tax Levy Limit.

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – APRIL 3, 2024
HYBRID REGULAR MEETING – 7:00 P.M.

Order No. 24-034. Move approval of the first reading on the proposed amended Chapter 421, the Town of Scarborough Authorization of Outdoor Services Ordinance, amending the applicable time period for May 31, 2024 through October 31, 2024 and schedule a public hearing and second reading for Wednesday, April 17, 2024. [*Planning Director*]

Planning Director

Ought to Pass

Sponsor

Recommendation

04/03/2024 – Vote:

First Reading/Vote

05/01/2024

Public Hearing

05/15/2024 – Vote:

Second Reading/Final Approval/Vote

Scarborough Town Council Meeting

Council Meeting Date: April 3, 2024

ACTION ITEM: Ordinance No. 24-034.
SUBJECT: First reading and schedule a public hearing and second reading on the proposed amended Chapter 421, the Town of Scarborough Authorization of Outdoor Services Ordinance, amending the applicable time period for May 31, 2024 through October 31, 2024.
PURPOSE: To implement an ordinance to allow businesses who wish to expand their current services to include outdoor services for the spring/summer season beginning May 31, 2024 through October 31, 2024.
BACKGROUND: In May 2020, the Town enacted an Emergency Ordinance to permit outdoor services during the COVID pandemic. The Emergency Ordinance was extended two additional times on October 7, 2020, and April 7, 2021, with a final expiration of May 31, 2022. During this time, several establishments took advantage of the allowance and were encouraged to amend their existing site plans through the site plan process if they wished to continue. However, many did not go through the site plan process and have continued to request tent permits for outdoor services during the summer months. The site plan process can be time consuming and costly. Staff has proposed this seasonal ordinance to be renewed on an annual basis to allow for outdoor services. In 2023, Town Council approved the Temporary Outdoor Services ordinance to be effective from July 21, 2023 through October 31, 2023. Staff recommends authorizing this Temporary Outdoor Services ordinance for 2024 with dates beginning May 31, 2024 through October 31, 2024.
FISCAL IMPACT: Permit fees of \$50 each
STATUS / PROCESS TO DATE: <ul style="list-style-type: none">Town Council First Reading: April 3, 2024
PROPOSED ACTION: Recommend move approval of the first reading on Order No. 24-034 and schedule the public hearing and second reading for Wednesday, April 17, 2023.
ATTACHMENTS: <ul style="list-style-type: none">2024 Temporary Outdoor Services Ordinance

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, approves Chapter 421, the Temporary Authorization of Outdoor Services Ordinance of the Town of Scarborough, Maine, as follows:

Chapter 421 – Town of Scarborough

Temporary Seasonal Authorization of Outdoor Services Ordinance

Section 1. Purpose: To implement this ordinance to allow businesses who wish to expand their current services to include outdoor services for the summer season beginning May 31, 2024 through October 31, 2024.

Section 2. Provisions: Notwithstanding any Town ordinance provisions to the contrary, the outdoor activity, display, sale of merchandise, and sale, service and consumption of food or drinks, including alcoholic beverages for restaurant and retail sales and services (together referred to as “outdoor services”) in certain temporary outdoor areas on private property is permitted subject to the following:

- 1) All properly licensed and/or permitted businesses at the time of enactment of this ordinance in the Town of Scarborough wishing to create or expand existing outdoor services shall first apply to the Town of Scarborough’s Planning Department and receive correspondence of approval from the Town;
- 2) In addition to the creation or expansion of outdoor services areas, temporary awnings, tents or other temporary structures may be permitted to protect the outdoor service areas from the elements;
- 3) All applications for outdoor services shall be submitted by entities properly licensed and/or permitted by the appropriate state and local agencies to perform the sales and services;

Approval for outdoor services under this temporary ordinance shall be granted through the Planning Department in coordination with the Administrative Review Team described below. To receive approval for outdoor services businesses must demonstrate how they shall:

- 1) Refrain from creating or increasing noise, such as playing or allowing amplified music, in violation of Chapter 616, the Good Neighbor Ordinance.
- 2) Not encroach on public right-of-ways.
- 3) Not interfere with handicap parking spaces.
- 4) Maintain adequate parking for patrons (the expansion or creation of outdoor services associated with approved uses may not exceed the approved capacity of the business unless additional parking is available.
- 5) Maintain safe pedestrian and vehicular access.
- 6) Maintain all access required under the Americans with Disabilities Act.
- 7) Not impede fire and emergency access nor not block fire lanes.
- 8) Provide physical barriers between the outdoor services areas and the parking field.
- 9) Demonstrate that any temporary structure complies with the rules and policies of the Town.

10) Outdoor service areas can only be used between the hours of 9am and 9pm Sunday to Thursday and 9am to 10pm Friday and Saturday.

11) Shall be in compliance with the provisions of the Maine Alcoholic Beverages and Lottery Operations - Division of Liquor Licensing and Enforcement and other federal, state and local laws or regulations. Additionally, any business legally serving alcoholic beverages in the outdoor services area shall clearly delineate, by use of physical markers and barricade, areas where alcoholic beverages are to be served and consumed, and such consumption shall not take place outside of the marked areas. Signage reading, "No Alcohol Beyond This Point" shall be posted at all exit points and as necessary.

12) Each business seeking approval for outdoor services under this Ordinance shall apply to the Planning Department.

13) All applications shall be approved or denied by an Administrative Review Team consisting of the Town Planner, or their designee, the Zoning Administrator, or their designee, the Police Chief, or their designee, and the Fire Chief, or their designee. Approvals require unanimous decision of the administrative review team. Appeals of any denials may be made in accordance with the provisions of Chapter 405, section V.B.1.

The application shall include the following:

- 1) A narrative and plan describing the nature of the use, including responses or illustrations demonstrating how the proposal meets the requirements stated above.
- 2) A plan, survey, or aerial of the lot on which the proposed outdoor services will be located with clearly marked limits and capacity of the proposed outdoor services area.
- 3) Details of the proposed barriers used to delineate the outdoor service area.
- 4) Details of any temporary awning, tents or other temporary structures proposed (depending on size and materials additional permits may be required).
- 5) If parking capacity is to be met utilizing off-site parking spaces the application shall include the proposed location, capacity and rights of use of such off-site parking spaces.
- 6) Any additional materials as deemed necessary by the Administrative Review Team to ensure compliance with the standards.

If after the establishment of the outdoor services area the Administrative Review Team determines that the activity is proposing unforeseen hazards and concerns for public health, welfare, and safety the Town may suspend or revoke any permits under this order. Suspended or revoked activities may resubmit an application following the procedures above for review and reconsideration.

Approved outdoor service areas are valid and allowed until the expiration of this Ordinance or any extensions, modifications or replacements thereto, unless revoked by the Town.

Section 3. Sunset Clause. This ordinance shall expire on the 31st day of October, 2024.

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – APRIL 3, 2024
HYBRID REGULAR MEETING – 7:00 P.M.

Order No. 24-035. Move approval of the first reading and refer to the Planning Board, the proposed repeal and replacement of Chapter 405A Floodplain Management Ordinance as required to maintain standing in the National Flood Insurance Program (NFIP) and to recognize the areas of special flood hazard, Zones A, AE, and VE for the Town of Scarborough, Cumberland County, Maine, identified by the Federal Emergency Management Agency in a report entitled “Flood Insurance Study – Cumberland County, Maine” dated June 20, 2024, with accompanying “Flood Insurance Rate Map” dated June 20, 2024, as amended and schedule the Town Council public hearing upon receipt of the Planning Board review. *[Planning Director]*

Planning Director

Ought to Pass

Sponsor

Recommendation

04/03/2024 – Vote:

First Reading/Vote

TBD

Public Hearing

TBD

Second Reading/Final Approval/Vote

Scarborough Town Council Meeting

Council Meeting Date: April 3, 2024

ACTION ITEM: Order No. 24-035.

SUBJECT:

First reading and refer to the Planning Board, the proposed repeal and replacement of Chapter 405A Floodplain Management Ordinance as required to maintain standing in the National Flood Insurance Program (NFIP) and to recognize the areas of special flood hazard, Zones A, AE, and VE for the Town of Scarborough, Cumberland County, Maine, identified by the Federal Emergency Management Agency in a report entitled “Flood Insurance Study – Cumberland County, Maine” dated June 20, 2024, with accompanying “Flood Insurance Rate Map” dated June 20, 2024, as amended. *[Planning Director]*

PURPOSE:

To review the proposed new Chapter 405A Floodplain Management Ordinance and referenced Flood Insurance Rate Map” dated June 20, 2024, as amended.

BACKGROUND:

Flood zone determination for each property in Scarborough is defined by the Federal Emergency Management Agency (FEMA). FEMA uses flood maps as a tool to indicate which areas are most at risk of being flooded in a community. They maintain and update data through their flood maps and risk assessments. The purpose of the flood maps, aside from using them to make informed decisions about how to reduce or manage risk, is to help mortgage lenders determine insurance requirements.

According to FEMA, flooding is one of the most common and costly disasters. Risk can change over time from new development, weather patterns, and other factors. The current FEMA flood maps used by the Town of Scarborough are from 1986. FEMA began a remapping process around 2012, resulting in preliminary updating flood maps in 2017. After a lengthy appeal process and map revisions for some communities, the Town of Scarborough received a Letter of Final Determination (LFD) from FEMA in December 2023, indicating June 20, 2024 as the effective date of the new Digital Flood Insurance Rate Maps (DFIRMs) for Cumberland County.

As a coastal community, Scarborough participates in FEMA’s National Flood Insurance Program. The NFIP works with communities required to adopt and enforce floodplain management regulations. Other benefits include federal flood insurance to those who have federally backed mortgages in the floodplain and eligibility for disaster funding and low interest loans when the county is in a declared disaster area. With the new FEMA flood maps going into effect, Scarborough must adopt an updated Floodplain Management Ordinance which references the new map date on or before June 20, 2024 in order to avoid being suspended from the NFIP.

Impact in Scarborough

- Current Flood Zone - 1749 Properties Affected
- Pending Flood Zone - 2323 Properties Affected
- Properties that were not in Flood Zone that are now - 679 Newly Affected Properties
- Properties that were in Flood Zone that now are not - 105 Properties Removed from Flood Zone

Some properties will now be within the new special flood hazard areas (SFHA). An SFHA is an area with a 1% annual chance of flood that meets or exceeds that base flood elevation. There are 3 major impacts that property owners that will now be within an SFHA need to be aware of:

- They may now be required to obtain flood insurance if they have a federally secured mortgage on their dwelling.
- They will be subject to floodplain management standards when making improvements to their property, such as additions, remodels, new structures, or even septic system replacements.
- They will be subject to substantial improvement/substantial damage provisions, which involves repairs or improvements to the building with a cost equal to or exceeding 50% of the market value of the building alone. At that point, the entire building will need to be brought into compliance with the floodplain management standards.

For those that were already in a SFHA, but find that their base flood elevation has increased, they may experience a rate change in their flood insurance policy, and will also be subject to floodplain management standards for any new construction or substantial improvement or substantial damage. The same can be said for any properties that were in a SFHA and experience a flood zone change. For any property owners that find they are no longer in a SFHA and wish to or are allowed by their mortgage holder to discontinue their flood insurance, they may be able to receive a prorated refund on their insurance premium for the current year only.

Also affected by the change are property owners who have been in the flood zone but submitted a request for a letter of map change (LOMC) in the past. FEMA reviewed these properties and placed them in 4 different categories for when the updated maps go into effect:

1. LOMCs Incorporated - Will be reflected in the new FIRM and will remain in effect until then.
2. LOMCs Not Incorporated - Will not be reflected in the new FIRM because of scale limitations or being outside the new special flood hazard areas, but will be revalidated upon the effective date of the new FIRM.
3. LOMCs Superseded - Will no longer be effective due to the new flood hazard information.
4. LOMCs To Be Redetermined - Previous LOMC information will be reviewed and, if appropriate, a new determination will be made by FEMA.

There were no LOMCs in category #1 and #4. The Town has issued letters to property owners in category 3 to make them aware that their status has changed and, in most cases, they will now find their property in a special flood hazard area and be subject to the regulatory requirements in the Floodplain Management Ordinance. Properties in category 2 will not be impacted as their LOMC will be revalidated free of charge 1 day after the new FIRM becomes effective. This only involves properties that, in years past, applied for and received a LOMC.

Timeline:

- 2017: FEMA delivers preliminary flood maps
- 2018: Town of Scarborough and neighboring communities submit appeals of the preliminary flood maps
- 2019: FEMA denies Scarborough's appeal as well as all communities in Cumberland and York Counties, except South Portland and Old Orchard Beach
- December 2023: Scarborough receives letter of Final Map Determination from FEMA indicating that flood hazard determinations are now considered final, and that NFIP communities must adopt the new Flood Insurance Study and Flood Insurance Rate Maps by the effective date of June 20, 2024.
- January 2024: Scarborough receives letter from State of Maine regarding rollout requirements for the new Digital Flood Insurance Rate Maps (DFIRMs) for Cumberland County, effective June 20, 2024.

FISCAL IMPACT:

Will have direct effect on individual property owners depending upon mortgage status and current floodplain insurance status.

STATUS / PROCESS TO DATE:

- Town Council Workshop: March 20, 2024
- Town Council First Reading: April 3, 2024
- Planning Board Public Hearing: April 16, 2024
- Town Council Public Hearing: May 1, 2024
- Town Council Second Reading: May 15, 2024

PROPOSED ACTION:

Recommend approval of the first reading and refer to the Planning Board on Order No. 24-035 and schedule the public hearing upon receipt of the Planning Boards review.

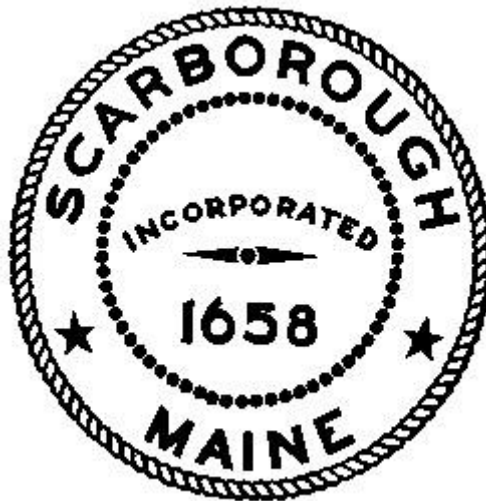
ATTACHMENTS:

- Existing Chapter 405A Floodplain Management Ordinance
- Replaced Chapter 405A Floodplain Management Ordinance
- December 20, 2024 Letter from FEMA
- January 8, 2024 Letter from DACF Directing Action

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following Chapter 405A Town of Scarborough Floodplain Management Ordinance is hereby repealed and is replaced it with a new Floodplain Management Ordinance as recommended by the Planning Director.

CHAPTER 405A

TOWN OF SCARBOROUGH FLOODPLAIN MANAGEMENT ORDINANCE



Enacted on March 7, 2007
Amended October 17, 2007

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**CHAPTER 405A
TOWN OF SCARBOROUGH
FLOODPLAIN MANAGEMENT ORDINANCE**

ARTICLE I - PURPOSE AND ESTABLISHMENT

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

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

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

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

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

The areas of special flood hazard, Zones A, A1-30, AO, and V1-30, are identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study - Town of Scarborough, Maine, Cumberland County," dated December 19, 1984 with accompanying "Flood Insurance Rate Map" dated April 2, 1992, which are hereby adopted by reference and declared to be a part of this Ordinance.

ARTICLE II - PERMIT REQUIRED

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

ARTICLE III - APPLICATION FOR PERMIT

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

- A. The name, address and phone number of the applicant, owner, and contractor;
- B. An address and a map indicating the location of the construction site;
- C. A site plan showing location of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions;
- D. A statement of the intended use of the structure and/or development;
- E. A statement of the cost of the development including all materials and labor;
- F. A statement as to the type of sewage system proposed;
- G. Specification of dimensions of the proposed structure and/or development;
[Items H-K.3. apply only to new construction and substantial improvements.]
- H. The elevation in relation to the National Geodetic Vertical Datum (NGVD), or to a locally established datum in Zone A only, of the:
 - 1. base flood at the proposed site of all new or substantially improved structures, which is determined:
 - a. in Zones A1-30, AO, and V1-30, from data contained in the "Flood Insurance Study - Town of Scarborough, Maine," as described in Article I; or,
 - b. in Zone A:
 - (1) from any base flood elevation data from federal, state, or other technical sources (such as FEMA's Quick-2 model, FEMA 265/July 1995), including information obtained pursuant to Article VI.K. and IX.D.;
 - (2) from the contour elevation extrapolated from a best fit analysis of the floodplain boundary when overlaid onto a USGS Quadrangle Map or other topographic map prepared by a Professional Land Surveyor or registered professional engineer, if the floodplain boundary has a significant correlation to the elevation contour line(s); or, in the absence of all other data,
 - (3) to be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building.
 - 2. highest and lowest grades at the site adjacent to the walls of the proposed building;
 - 3. lowest floor, including basement; and whether or not such structures contain a basement; and,
 - 4. level, in the case of non-residential structures only, to which the structure will be floodproofed;

- I. A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in Article VI;
- J. A written certification by a Professional Land Surveyor, registered professional engineer or architect, that the base flood elevation and grade elevations shown on the application are accurate;
- K. The following certifications as required in Article VI by a registered professional engineer or architect:
 - 1. a Floodproofing Certificate (FEMA Form 81-65, 02/06, as amended), to verify that the floodproofing methods for any non-residential structures will meet the floodproofing criteria of Article III.H.4.; Article VI.G.; and other applicable standards in Article VI; (amended 10/17/2007)
 - 2. a V-Zone Certificate to verify that the construction in coastal high hazard areas, Zones V1-30, will meet the criteria of Article VI.P.; and other applicable standards in Article VI;
 - 3. a Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Article VI.L.2.a.;
 - 4. a certified statement that bridges will meet the standards of Article VI.M.;
 - 5. a certified statement that containment walls will meet the standards of Article VI.N.;
- L. A description of the extent to which any water course will be altered or relocated as a result of the proposed development; and,
- M. A statement of construction plans describing in detail how each applicable development standard in Article VI will be met.

ARTICLE IV - APPLICATION FEE AND EXPERT'S FEE

A non-refundable application fee for all minor development and for all new construction or substantial improvements as set forth in the Schedule of Fees shall be paid to the Town Clerk or Code Enforcement Officer and a copy of a receipt for the same shall accompany the application. (amended 10/17/2007)

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

ARTICLE V - REVIEW STANDARDS FOR FLOOD HAZARD DEVELOPMENT PERMIT APPLICATIONS

The Code Enforcement Officer shall:

- A. Review all applications for the Flood Hazard Development Permit to assure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of Article VI (Development Standards) have been, or will be met;
- B. Utilize, in the review of all Flood Hazard Development Permit applications:
 - 1. the base flood and floodway data contained in the "Flood Insurance Study - Town of Scarborough, Maine," as described in Article I.;
 - 2. in special flood hazard areas where base flood elevation and floodway data are not provided, the Code Enforcement Officer shall obtain, review and reasonably utilize any base flood elevation and floodway data from federal, state, or other technical sources, including information obtained pursuant to Article III.H.1.b.; Article VI.K.; and Article IX.D., in order to administer Article VI of this Ordinance; and,
 - 3. when the community establishes a base flood elevation in a Zone A by methods outlined in Article III.H.1.b., the community shall submit that data to the Maine Floodplain Management Program in the State Planning Office.
- C. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in Article I of this Ordinance;
- D. In the review of Flood Hazard Development Permit applications, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1344;
- E. Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Floodplain Management Program in the State Planning Office prior to any alteration or relocation of a watercourse and submit copies of such notifications to the Federal Emergency Management Agency;
- F. If the application satisfies the requirements of this Ordinance, approve the issuance of one of the following Flood Hazard Development Permits, based on the type of development:
 - 1. A two-part Flood Hazard Development Permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the Code Enforcement Officer with an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer or architect based on the Part I permit construction, "as built", for verifying compliance with the

elevation requirements of Article VI, paragraphs F, G, H, or P. Following review of the Elevation Certificate data, which shall take place within 72 hours of receipt of the application, the Code Enforcement Officer shall issue Part II of the Flood Hazard Development Permit. Part II shall authorize the applicant to complete the construction project; or,

2. A Flood Hazard Development Permit for Floodproofing of Non-Residential Structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the floodproofing standards of Article VI.G.1.a.,b., and c. The application for this permit shall include a Floodproofing Certificate signed by a registered professional engineer or architect; or,
3. A Flood Hazard Development Permit for Minor Development for all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. Minor development also includes, but is not limited to: accessory structures as provided for in Article VI.J., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

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

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

ARTICLE VI - DEVELOPMENT STANDARDS

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

- A. All Development - All development shall:
 1. be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
 2. use construction materials that are resistant to flood damage;
 3. use construction methods and practices that will minimize flood damage; and,
 4. use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during flooding conditions.

- B. Water Supply - All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems.
- C. Sanitary Sewage Systems - All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of floodwaters into the system and discharges from the system into floodwaters.
- D. On Site Waste Disposal Systems - On site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.
- E. Watercourse Carrying Capacity - All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the watercourse.
- F. Residential - New construction or substantial improvement of any residential structure located within:
 - 1. Zones A1-30 shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.
 - 2. Zone AO shall have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.
 - 3. Zone AO shall have the lowest floor (including basement) elevated above the highest adjacent grade:
 - a. at least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,
 - b. at least three feet if no depth number is specified.
 - 4. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B.; or Article IX.D.
 - 5. Zones V1-30 shall meet the requirements of Article VI.P.
- G. Non Residential - New construction or substantial improvement of any non-residential structure located within:
 - 1. Zones A1-30 shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation, or together with attendant utility and sanitary facilities shall:
 - a. be floodproofed to at least one foot above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;
 - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
 - c. be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood

Hazard Development Permit, as required by Article III.K. and shall include a record of the elevation above mean sea level to which the structure is floodproofed.

2. Zone AO shall have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.
3. Zone AO shall have the lowest floor (including basement) elevated above the highest adjacent grade:
 - a. at least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,
 - b. at least three feet if no depth number is specified; or,
 - c. together with attendant utility and sanitary facilities be floodproofed to meet the elevation requirements of this section and floodproofing standards of Article VI.G.1.
4. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B.; or Article IX.D., or
 - a. together with attendant utility and sanitary facilities meet the floodproofing standards of Article VI.G.1.
5. Zones V1-30 shall meet the requirements of Article VI.P.

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

1. Zones A1-30 shall:
 - a. be elevated such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation;
 - b. be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and,
 - c. be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:
 - (1) over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by,
 - (2) frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).
 - (3) all components of the anchoring system described in Article VI.H.1.c.(1)&(2) shall be capable of carrying a force of 4800 pounds.
2. Zone AO shall have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.

3. Zone AO shall have the lowest floor (including basement) of the manufactured home elevated above the highest adjacent grade:
 - a. at least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,
 - b. at least three feet if no depth number is specified; and,
 - c. meet the anchoring requirements of Article VI.H.1.c.
4. Zone A shall:
 - a. be elevated on a permanent foundation, as described in Article VI.H.1.b., such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B; or Article IX.D.; and
 - b. meet the anchoring requirements of Article VI.H.1.c.
5. Zones V1-30 shall meet the requirements of Article VI.P.

I. Recreational Vehicles - Recreational Vehicles located within:

1. Zones A1-30 shall either:
 - a. be on the site for fewer than 180 consecutive days,
 - b. be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or,
 - c. be permitted in accordance with the elevation and anchoring requirements for "manufactured homes" in Article VI.H.1.
2. Zones V1-30 shall meet the requirements of either Article VII.1.a. or b., or Article VI.P.

J. Accessory Structures - Accessory Structures, as defined in Article XIV, located within Zones A1-30, AO, and A, shall be exempt from the elevation criteria required in Article VI.F. & G. above, if all other requirements of Article VI and all the following requirements are met. Accessory Structures shall:

1. be 500 square feet or less and have a value less than \$3000;
2. have unfinished interiors and not be used for human habitation;
3. have hydraulic openings, as specified in Article VI.L.2., in at least two different walls of the accessory structure;
4. be located outside the floodway;
5. when possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and,
6. have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Special Flood Hazard Area.

K. Floodways -

1. In Zones A1-30 riverine areas, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway which is designated on the community's Flood Insurance Rate Map, unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
 2. In Zones A1-30 and A riverine areas, for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in the floodway as determined in Article VI.K.3. unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:
 - a. will not increase the water surface elevation of the base flood more than one foot at any point within the community; and,
 - b. is consistent with the technical criteria contained in Chapter 5 entitled "Hydraulic Analyses," Flood Insurance Study - Guidelines and Specifications for Study Contractors, (FEMA 37/ January 1995, as amended).
 3. In Zones A1-30 and A riverine areas for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.
- L. Enclosed Areas Below the Lowest Floor - New construction or substantial improvement of any structure in Zones A1-30, AO, and A that meets the development standards of Article VI, including the elevation requirements of Article VI, paragraphs F, G, or H and is elevated on posts, columns, piers, piles, "stilts," or crawl spaces may be enclosed below the base flood elevation requirements provided all the following criteria are met or exceeded:
1. Enclosed areas are not "basements" as defined in Article XIV;
 2. Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement must either:
 - a. be engineered and certified by a registered professional engineer or architect; or,
 - b. meet or exceed the following minimum criteria:
 - (1) a minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;
 - (2) the bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade; and,
 - (3) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of

flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means;

3. The enclosed area shall not be used for human habitation; and,
 4. The enclosed areas are usable solely for building access, parking of vehicles, or storage.
- M. Bridges - New construction or substantial improvement of any bridge in Zones A1-30, AO, A, and V1-30 shall be designed such that:
1. when possible, the lowest horizontal member (excluding the pilings, or columns) is elevated to at least one foot above the base flood elevation; and
 2. a registered professional engineer shall certify that:
 - a. the structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of Article VI.K.; and
 - b. the foundation and superstructure attached thereto are designed to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.
- N. Containment Walls - New construction or substantial improvement of any containment wall located within:
1. Zones A1-30, A, and V1-30 shall:
 - a. have the containment wall elevated to at least one foot above the base flood elevation;
 - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
 - c. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K.
 2. Zone AO shall have adequate drainage paths around containment walls on slopes, to guide floodwater away from the proposed walls.
 3. Zone AO shall have the top of the containment wall elevated above the highest adjacent grade:
 - a. at least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,
 - b. at least three feet if no depth number is specified; and,
 - c. shall meet the requirements of Article VI.N.1.b. & c.
- O. Wharves, Piers and Docks - New construction or substantial improvement of wharves, piers, and docks are permitted in Zones A1-30, AO, A, and V1-30, in and over water and seaward of the mean high tide if the following requirements are met:

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

P. Coastal Floodplains -

1. All new construction located within Zones A1-30, A, and V1-30 shall be located landward of the reach of mean high tide except as provided in Article VI.P.6.
2. New construction or substantial improvement of any structure located within Zones V1-30 shall:
 - a. be elevated on posts or columns such that:
 - (1) the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to one foot above the base flood elevation;
 - (2) the pile or column foundation and the elevated portion of the structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components; and,
 - (3) water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state and local building standards.
 - b. have the space below the lowest floor:
 - (1) free of obstructions; or,
 - (2) constructed with open wood lattice-work, or insect screening intended to collapse under wind and water without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting piles or columns; or,
 - (3) constructed with non-supporting breakaway walls, which have a design safe loading resistance of not less than 10 or more than 20 pounds per square foot.
 - c. require a registered professional engineer or architect to: (amended 10/17/2007)
 - (1) develop or review the structural design, specifications, and plans for the construction, which must meet or exceed the technical criteria contained in the *Coastal Construction Manual*, (FEMA-55/June, 2000); and,
 - (2) certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the criteria of Article VI.P.2.
3. The use of fill for structural support in Zones V1-30 is prohibited.
4. Human alteration of sand dunes within Zones V1-30 is prohibited unless it can be demonstrated that such alterations will not increase potential flood damage.
5. The area below the lowest floor shall be used solely for parking vehicles, building access, and storage.

6. Conditional Use - Lobster sheds and fishing sheds may be located seaward of mean high tide and shall be exempt from the elevation requirement in Article VI.G. only if permitted as a Conditional Use following review and approval by the Planning Board, as provided in Article VII, and if all the following requirements and those of Article VI.A., VI.K., and V.L. are met:
 - a. The conditional use shall be limited to low value structures such as metal or wood sheds 200 square feet or less and shall not exceed more than one story.
 - b. The structure shall be securely anchored to the wharf or pier to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.
 - c. The structure will not adversely increase wave or debris impact forces affecting nearby buildings.
 - d. The structure shall have unfinished interiors and shall not be used for human habitation.
 - e. Any mechanical, utility equipment and fuel storage tanks must be anchored and either elevated or floodproofed to one foot above the base flood elevation.
 - f. All electrical outlets shall be ground fault interrupt type. The electrical service disconnect shall be located on shore above the base flood elevation and when possible outside the Special Flood Hazard Area.

Article VII - CONDITIONAL USE REVIEW

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

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

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

5. The applicant shall be notified by the Planning Board in writing over the signature of the Chairman of the Planning Board that flood insurance is not available for structures located entirely over water or seaward of mean high tide.

B. Expansion of Conditional Uses

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

ARTICLE VIII - CERTIFICATE OF COMPLIANCE

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

- A. For New Construction or Substantial Improvement of any elevated structure the applicant shall submit to the Code Enforcement Officer:
 1. an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer, or architect, for compliance with Article VI, paragraphs F, G, H, or P and,
 2. for structures in Zones V1-30, certification by a registered professional engineer or architect that the design and methods of construction used are in compliance with Article VI.P.2.
- B. The applicant shall submit written notification to the Code Enforcement Officer that the development is complete and complies with the provisions of this ordinance.
- C. Within 10 working days, the Code Enforcement Officer shall:
 1. review the required certificate(s) and the applicant's written notification; and,
 2. upon determination that the development conforms with the provisions of this ordinance, shall issue a Certificate of Compliance.

ARTICLE IX - REVIEW OF SUBDIVISION AND DEVELOPMENT PROPOSALS

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

- A. All such proposals are consistent with the need to minimize flood damage.
- B. All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.
- C. Adequate drainage is provided so as to reduce exposure to flood hazards.

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

ARTICLE X - APPEALS AND VARIANCES

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

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

- A. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- B. Variances shall be granted only upon:
 - 1. a showing of good and sufficient cause; and,
 - 2. a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and,
 - 3. a showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances; and,
 - 4. a determination that failure to grant the variance would result in "undue hardship," which in this sub-section means:
 - a. that the land in question cannot yield a reasonable return unless a variance is granted; and,
 - b. that the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and,
 - c. that the granting of a variance will not alter the essential character of the locality; and,

- d. that the hardship is not the result of action taken by the applicant or a prior owner.
- C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as it deems necessary.
- D. Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
 1. other criteria of Article X and Article VI.K. are met; and,
 2. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- E. Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of Historic Structures upon the determination that:
 1. the development meets the criteria of Article X, paragraphs A. through D. above; and,
 2. the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- F. Any applicant who meets the criteria of Article X, paragraphs A. through E. shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:
 1. the issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;
 2. such construction below the base flood level increases risks to life and property; and,
 3. the applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.
- G. Appeal Procedure for Administrative and Variance Appeals
 1. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party within thirty days after receipt of a written decision of the Code Enforcement Officer or Planning Board.
 2. Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
 3. The Board of Appeals shall hold a public hearing on the appeal within thirty-five days of its receipt of an appeal request.

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

ARTICLE XI - ENFORCEMENT AND PENALTIES

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

ARTICLE XII - VALIDITY AND SEVERABILITY

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

ARTICLE XIII - CONFLICT WITH OTHER ORDINANCES

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

ARTICLE XIV - DEFINITIONS

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

Accessory Structure:

Means a small detached structure that is incidental and subordinate to the principal structure.

Adjacent Grade:

Means the natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Area of Shallow Flooding:

Means a designated AO or AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of Special Flood Hazard:

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

Base Flood:

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

Basement:

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

Breakaway Wall:

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

Building:

See Structure.

Certificate of Compliance:

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

Code Enforcement Officer:

A person certified under Title 30-A MRSA, Section 4451 (including exceptions in Section 4451, paragraph 1) and employed by a municipality to enforce all applicable comprehensive planning and land use laws and ordinances. (amended 10/17/2007)

Conditional Use:

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

Development:

Means any man made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials. (*The new wording of this definition is directly from the FEMA regulations at 44 CFR 59.1*) (amended 10/17/2007)

Elevated Building:

Means a non-basement building:

- a. built, in the case of a building in Zones A1-30, A, or AO, to have the top of the elevated floor, or in the case of a building in Zones V1-30 to have the bottom of the lowest horizontal structural member of the elevated floor, elevated above the ground level by means of pilings, columns, post, piers, or "stilts;" and
- b. adequately anchored so as not to impair the structural integrity of the building during a flood of up to one foot above the magnitude of the base flood.

In the case of Zones A1-30, A, or AO, Elevated Building also includes a building elevated by means of fill or solid foundation perimeter walls with hydraulic openings sufficient to facilitate the unimpeded movement of flood waters, as required in Article VI.L. In the case of Zones V1-30, Elevated Building also includes a building otherwise meeting the definition of elevated building, even though the lower area is enclosed by means of breakaway walls, if the breakaway walls meet the standards of Article VI.P.2.b.(3).

Elevation Certificate:

An official form (FEMA Form 81-31, 02/06, as amended) that:

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

Flood or Flooding:

Means:

- a. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 1. The overflow of inland or tidal waters.
 2. The unusual and rapid accumulation or runoff of surface waters from any source.
- b. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding

anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph a.1. of this definition.

Flood Elevation Study:

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

Flood Insurance Rate Map (FIRM):

Means an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study:

See Flood Elevation Study.

Floodplain or Flood-prone Area:

Means any land area susceptible to being inundated by water from any source (see flooding).

Floodplain Management:

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

Floodplain Management Regulations:

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

Floodproofing:

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

Floodway:

See Regulatory Floodway.

Floodway Encroachment Lines:

Mean the lines marking the limits of floodways on federal, state, and local floodplain maps.

Freeboard:

Means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed that could

contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

Functionally Dependent Use:

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

Historic Structure:

Means any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 1. By an approved state program as determined by the Secretary of the Interior, or
 2. Directly by the Secretary of the Interior in states without approved programs.

Locally Established Datum:

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

Lowest Floor:

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

Manufactured Home:

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

Manufactured Home Park or Subdivision:

Means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean Sea Level:

Means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

Minor Development:

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

National Geodetic Vertical Datum (NGVD):

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

New Construction:

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

100-year flood:

See Base Flood.

Recreational Vehicle:

Means a vehicle which is:

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

Regulatory Floodway:

- a. means the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot, and

- b. when not designated on the community's Flood Insurance Rate Map, it is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.

Riverine:

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

Special Flood Hazard Area:

See Area of Special Flood Hazard.

Start of Construction:

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

Structure:

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

Substantial Damage:

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

Substantial Improvement:

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

- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the

local code enforcement official and which are the minimum necessary to assure safe living conditions; or

- b. Any alteration of a Historic Structure, provided that the alteration will not preclude the structure's continued designation as a historic structure, and a variance is obtained from the Board of Appeals.

Variance:

Means a grant of relief by a community from the terms of a floodplain management regulation.

Violation:

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

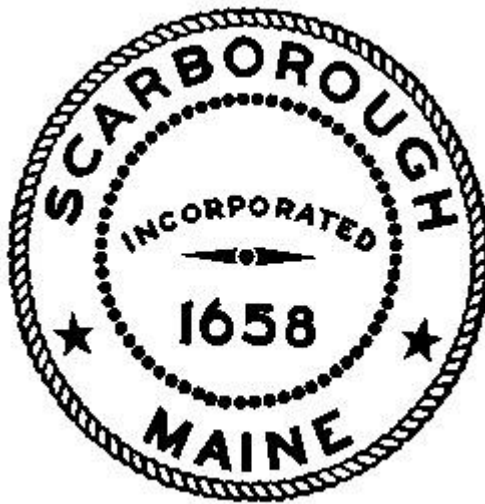
ARTICLE XV - ABROGATION

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

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following new Chapter 405A Town of Scarborough Floodplain Management Ordinance does hereby repeal and replaces any municipal ordinance previously enacted to comply with the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).

CHAPTER 405A

TOWN OF SCARBOROUGH FLOODPLAIN MANAGEMENT ORDINANCE



ENACTED: May 15, 2024

EFFECTIVE: June 20, 2024

CERTIFIED BY: _____
Signature

CERTIFIED BY: _____
Print Name

Title

FLOODPLAIN MANAGEMENT ORDINANCE

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ARTICLE I - PURPOSE AND ESTABLISHMENT

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

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

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

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

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

The areas of special flood hazard, Zones A, AE, and VE for the Town of Scarborough, Cumberland County, Maine, identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study – Cumberland County, Maine" dated June 20, 2024, with accompanying "Flood Insurance Rate Map" dated June 20, 2024, as amended, are hereby adopted by reference and declared to be a part of this Ordinance.

ARTICLE II - PERMIT REQUIRED

The Code Enforcement Officer shall be designated as the local Floodplain Administrator. The Floodplain Administrator shall have the authority to implement the commitment made to administer and enforce the requirements for participation in the National Flood Insurance Program.

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

ARTICLE III - APPLICATION FOR PERMIT

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

- A. The name, address, and phone number of the applicant, owner, and contractor;
- B. An address and a map indicating the location of the construction site;

- C. A site plan showing locations of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions;
- D. A statement of the intended use of the structure and/or development;
- E. A statement of the cost of the development including all materials and labor;
- F. A statement as to the type of sewage system proposed;
- G. Specification of dimensions of the proposed structure and/or development;

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

- H. The elevation in relation to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD), or to a locally established datum in Zone A only, of the:
 - 1. base flood at the proposed site of all new or substantially improved structures, which is determined:
 - a. in Zones AE and VE from data contained in the "Flood Insurance Study - Cumberland County, Maine," as described in Article I; or,
 - b. in Zone A:
 - (1) from any base flood elevation data from federal, state, or other technical sources (such as FEMA's Quick-2 model, FEMA 265), including information obtained pursuant to Article VI.M. and IX.D.; or,
 - (2) in the absence of all data described in Article III.H.1.b.(1), information to demonstrate that the structure shall meet the elevation requirement in Article VI.H.2.b., Article VI.I.2.b., or Article VI.J.2.b.
 - 2. highest and lowest grades at the site adjacent to the walls of the proposed building;
 - 3. lowest floor, including basement; and whether or not such structures contain a basement;
 - 4. lowest machinery and equipment servicing the building; and,
 - 5. level, in the case of non-residential structures only, to which the structure will be floodproofed.
- I. A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in Article VI;
- J. A written certification by:
 - 1. a Professional Land Surveyor that the grade elevations shown on the application are accurate; and,
 - 2. a Professional Land Surveyor, registered professional engineer or architect that the base flood elevation shown on the application is accurate.
- K. The following certifications as required in Article VI by a registered professional engineer or architect:

1. a Floodproofing Certificate (FEMA Form FF-206-FY-22-153, as amended), to verify that the floodproofing methods for any non-residential structures will meet the floodproofing criteria of Article VI.I., and other applicable standards in Article VI;
 2. a V-Zone Certificate to verify that the construction in coastal high hazard areas, Zone VE and Coastal AE Zone, will meet the criteria of Article VI.R.; and other applicable standards in Article VI;
 3. a Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Article VI.N.2.a.;
 4. a certified statement that bridges will meet the standards of Article VI.O.;
 5. a certified statement that containment walls will meet the standards of Article VI.P.
- L. A description of the extent to which any water course will be altered or relocated as a result of the proposed development; and,
- M. A statement of construction plans describing in detail how each applicable development standard in Article VI will be met.

ARTICLE IV - APPLICATION FEE AND EXPERT'S FEE

A non-refundable application fee for all minor development and for all new construction or substantial improvements as set forth in the Schedule of Fees shall be paid to the Town Clerk or Code Enforcement Officer and a copy of a receipt for the same shall accompany the application.

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

ARTICLE V - REVIEW STANDARDS FOR FLOOD HAZARD DEVELOPMENT PERMIT APPLICATIONS

The Code Enforcement Officer shall:

- A. Review all applications for the Flood Hazard Development Permit to assure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of Article VI (Development Standards) have been, or will be met;
- B. Utilize, in the review of all Flood Hazard Development Permit applications:
 1. the base flood and floodway data contained in the "Flood Insurance Study - Cumberland County, Maine," as described in Article I;

2. in special flood hazard areas where base flood elevation and floodway data are not provided, the Code Enforcement Officer shall obtain, review, and reasonably utilize any base flood elevation and floodway data from federal, state, or other technical sources, including information obtained pursuant to Article III.H.1.b.(1); Article VI.M.; and Article IX.D., in order to administer Article VI of this Ordinance; and,
 3. when the community establishes a base flood elevation in a Zone A by methods outlined in Article III.H.1.b.(1), the community shall submit that data to the Maine Floodplain Management Program.
- C. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in Article I of this Ordinance;
- D. In the review of Flood Hazard Development Permit applications, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1344;
- E. Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Floodplain Management Program prior to any alteration or relocation of a water course and submit copies of such notifications to the Federal Emergency Management Agency;
- F. If the application satisfies the requirements of this Ordinance, approve the issuance of one of the following Flood Hazard Development Permits, based on the type of development:
1. A two-part Flood Hazard Development Permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the Code Enforcement Officer with an “under construction” Elevation Certificate completed by a Professional Land Surveyor based on the Part I permit construction for verifying compliance with the elevation requirements of Article VI, paragraphs H., I., J., or R. Following review of the Elevation Certificate data, which shall take place within 72 hours of receipt of the application, the Code Enforcement Officer shall issue Part II of the Flood Hazard Development Permit. Part II shall authorize the applicant to complete the construction project; or,
 2. A Flood Hazard Development Permit for Floodproofing of Non-Residential Structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the floodproofing standards of Article VI.I.1. The application for this permit shall include a Floodproofing Certificate signed by a registered professional engineer or architect; or,
 3. A Flood Hazard Development Permit for Minor Development for all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. Minor development also includes but is not limited to: accessory structures as provided for in Article

V.I.L., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

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

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

ARTICLE VI - DEVELOPMENT STANDARDS

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

A. **All Development** - All development shall:

1. be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse, or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
2. use construction materials that are resistant to flood damage;
3. use construction methods and practices that will minimize flood damage; and,
4. use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located to prevent water from entering or accumulating within the components during flooding conditions.

B. **Water Supply** - All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.

C. **Sanitary Sewage Systems** - All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.

D. **On Site Waste Disposal Systems** - On site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.

E. **Watercourse Carrying Capacity** - All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the watercourse.

F. **Utilities** - New construction or substantial improvement of any structure (including manufactured homes) located within:

1. Zones A and AE shall have the bottom of all electrical, heating, plumbing, ventilation and air conditioning equipment, permanent fixtures and components, HVAC ductwork and duct systems, and any other utility service equipment, facilities, machinery, or connections servicing a structure, elevated to at least one foot above the base flood elevation.
2. Zone VE shall meet the requirements of Article VI.R.2.

G. **Physical Changes to the Natural Landscape** - Certain development projects, including but not limited to, retaining walls, sea walls, levees, berms, and rip rap, can cause physical changes that affect flooding conditions.

1. All development projects in Zones AE and VE that cause physical changes to the natural landscape shall be reviewed by a Professional Engineer to determine whether or not the project changes the base flood elevation, zone, and/or the flood hazard boundary line.
 - a. If the Professional Engineer determines, through the use of engineering judgement, that the project would not necessitate a Letter of Map Revision (LOMR), a certified statement shall be provided.
 - b. If the Professional Engineer determines that the project may cause a change, a hydrologic and hydraulic analysis that meets current FEMA standards shall be performed.
2. If the hydrologic and hydraulic analysis performed indicates a change to the base flood elevation, zone, and/or the flood hazard boundary line, the applicant may submit a Conditional Letter of Map Revision (C-LOMR) request to the Federal Emergency Management Agency for assurance that the as-built project will result in a change to the Flood Insurance Rate Map. Once the development is completed, a request for a Letter of Map Revision (LOMR) shall be initiated.
3. If the hydrologic and hydraulic analysis performed show a change to the base flood elevation, zone, and/or the flood hazard boundary line, as soon as practicable, but no later than 6 months after the completion of the project, the applicant shall submit the technical data to FEMA in the form of a Letter of Map Revision request.

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

1. Zone AE shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.
2. Zone A shall have the lowest floor (including basement) elevated:

- a. to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.(1); Article V.B.; or Article IX.D., or;
- b. in the absence of all data described in Article VI.H.2.a., to at least two feet above the highest adjacent grade to the structure.

3. Zone VE and Coastal AE Zone (as defined) shall meet the requirements of Article VI.R.

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

- 1. Zone AE shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation, or together with attendant utility and sanitary facilities shall:
 - a. be floodproofed to at least one foot above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;
 - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
 - c. be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K., and shall include a record of the elevation above mean sea level to which the structure is floodproofed.
- 2. Zone A shall have the lowest floor (including basement) elevated:
 - a. to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.(1); Article V.B.; or Article IX.D., or;
 - b. in the absence of all data described in Article VI.I.2.a., to at least two feet above the highest adjacent grade to the structure; or,
 - c. together with attendant utility and sanitary facilities, be floodproofed to one foot above the elevation established in Article VI.I.2.a. or b. and meet the floodproofing standards of Article VI.I.1.a., b., and c.
- 3. Zone VE and Coastal AE Zone (as defined) shall meet the requirements of Article VI.R.

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

- 1. Zone AE shall:

- a. be elevated such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation;
 - b. be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and,
 - c. be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:
 - (1) over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by,
 - (2) frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).
 - (3) All components of the anchoring system described in Article VI.J.1.c.(1) & (2) shall be capable of carrying a force of 4800 pounds.
2. Zone A shall:
- a. be elevated on a permanent foundation, as described in Article VI.J.1.b., such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.(1); Article V.B.; or Article IX.D.; or,
 - b. in the absence of all data described in Article VI.J.2.a., to at least two feet above the highest adjacent grade to the structure; and,
 - c. meet the anchoring requirements of VI.J.1.c.

5. Zone VE and Coastal AE Zone (as defined) shall meet the requirements of Article VI.R.

K. Recreational Vehicles - Recreational Vehicles located within:

- 1. Zones A and AE shall either:
 - a. be on the site for fewer than 180 consecutive days; and,
 - b. be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or,

- c. be permitted in accordance with the elevation and anchoring requirements for "manufactured homes" in Article VI.J.1.
- 2. Zone VE and Coastal AE Zone (as defined) shall meet the requirements of either Article VI.K.1.a. and b., or Article VI.R.

L. **Accessory Structures** - New construction or substantial improvement of Accessory Structures, as defined in Article XIV, shall be exempt from the elevation criteria required in Article VI.H. & I. above, if all other requirements of Article VI and all the following requirements are met.

- 1. Accessory Structures located in Zone A and AE shall:
 - a. meet the requirements of Article VI.A.1. through 4., as applicable;
 - b. be limited in size to a one-story two car garage;
 - c. have unfinished interiors and not be used for human habitation;
 - d. 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;
 - e. be located outside the floodway;
 - f. 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;
 - g. have hydraulic openings, as specified in Article VI.N.2., in at least two different walls of the accessory structure; and
 - h. be located outside the Coastal AE Zone.
- 2. Accessory Structures in Zone VE and Coastal A Zones shall meet the requirements of Article VI.R.

M. **Floodways** -

- 1. In Zone AE riverine areas, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway which is designated on the community's Flood Insurance Rate Map unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

2. In Zones A and AE riverine areas, for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in the floodway as determined in Article VI.M.3. unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:
 - a. will not increase the water surface elevation of the base flood more than one foot at any point within the community; and,
 - b. is consistent with the technical criteria contained in FEMA's guidelines and standards for flood risk analysis and mapping.
3. In Zones A and AE 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.

N. **Hydraulic Openings/Flood Vents** - New construction or substantial improvement of any structure in Zones A and AE that meets the development standards of Article VI, including the elevation requirements of Article VI, paragraphs H., I., or J. and is elevated on posts, columns, piers, piles, or crawl spaces may be enclosed below the base flood elevation requirements provided all the following criteria are met or exceeded:

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

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

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

1. when possible, the lowest horizontal member (excluding the pilings or columns) is elevated to at least one foot above the base flood elevation; and,
2. a registered professional engineer shall certify that:
 - a. the structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of Article VI.M.; 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.

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

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

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

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

R. **Coastal Floodplains** -

1. New construction located within Zones AE and VE shall be located landward of the reach of mean high tide except as provided in Article VI.R.7.
2. New construction or substantial improvement of any structure located within Zone VE or Coastal AE Zone shall have the bottom of all electrical, heating, plumbing, ventilation and air conditioning equipment, permanent fixtures and components, HVAC ductwork and duct systems, and any other utility service equipment, facilities, machinery, or connections servicing a structure, elevated to at least one foot above the base flood elevation. Systems, fixtures, equipment, and components shall not be mounted on or penetrate through walls intended to break away under flood loads.
3. New construction or substantial improvement of any structure located within Zone VE and Coastal AE Zones (as defined) shall:
 - a. be elevated on posts or columns such that:
 - (1) the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to at least one foot above the base flood elevation;
 - (2) the pile or column foundation and the elevated portion of the structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components; and,
 - (3) water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state and local building standards.
 - b. have the space below the lowest floor:
 - (1) free of obstructions; or,
 - (2) constructed with open wood lattice-work, or insect screening intended to collapse under wind and water without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting piles or columns; or,
 - (3) constructed with non-supporting breakaway walls that have a design safe loading resistance of not less than 10 or more than 20 pounds per square foot.
 - c. require a registered professional engineer or architect to:
 - (1) develop or review the structural design, specifications, and plans for the construction, which must meet or exceed the technical criteria contained in the *Coastal Construction Manual*, (FEMA-55); and,

- (2) certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the criteria of Article VI.R.3.
4. The use of fill for structural support in Zone VE and Coastal AE Zones is prohibited.
5. Human alteration of sand dunes within Zone VE and Coastal AE Zones is prohibited unless it can be demonstrated that such alterations will not increase potential flood damage.
6. The area below the lowest floor shall be used solely for parking vehicles, building access, and storage.
7. Conditional Use - Lobster sheds and fishing sheds may be located seaward of mean high tide and shall be exempt from the elevation requirement in Article VI.I. only if permitted as a Conditional Use following review and approval by the Planning Board, as provided in Article VII, and if all the following requirements and those of Article VI.A., VI.M., and VI.N. 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 at least one foot above the base flood elevation.
 - f. All electrical outlets shall be ground fault interrupt type. The electrical service disconnect shall be located on shore above the base flood elevation and, when possible, outside the Special Flood Hazard Area.

ARTICLE VII - CONDITIONAL USE REVIEW

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

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

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

B. Expansion of Conditional Uses

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

ARTICLE VIII - CERTIFICATE OF COMPLIANCE

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

- A. For New Construction or Substantial Improvement of any elevated structure the applicant shall submit to the Code Enforcement Officer:
 1. an Elevation Certificate completed by a Professional Land Surveyor for compliance with Article VI, paragraphs H., I., J., or R.; and,
 2. for structures in Zone VE and Coastal AE Zone (as defined), certification by a registered professional engineer or architect that the design and methods of construction used are in compliance with Article VI.R.3.
- B. The applicant shall submit written notification to the Code Enforcement Officer that the development is complete and complies with the provisions of this ordinance.
- C. Within 10 working days, the Code Enforcement Officer shall:

1. review the required certificate(s) and the applicant's written notification; and,
2. upon determination that the development conforms to the provisions of this ordinance, shall issue a Certificate of Compliance.

ARTICLE IX - REVIEW OF SUBDIVISION AND DEVELOPMENT PROPOSALS

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

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

ARTICLE X - APPEALS AND VARIANCES

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

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

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

B. Variances shall be granted only upon:

1. a showing of good and sufficient cause; and,
2. a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public, or conflict with existing local laws or ordinances; and,
3. a showing that the issuance of the variance will not conflict with other state, federal, or local laws or ordinances; and,
4. a determination that failure to grant the variance would result in "undue hardship," which in this sub-section means:
 - a. that the land in question cannot yield a reasonable return unless a variance is granted; and,
 - b. that the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and,
 - c. that the granting of a variance will not alter the essential character of the locality; and,
 - d. that the hardship is not the result of action taken by the applicant or a prior owner.

C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as is deemed necessary.

D. Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:

1. the criteria of Article X.A. through C. and Article VI.M. are met; and,
2. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

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

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

- F. Variances may be issued for new construction and substantial improvement of Agricultural Structures being used for the conduct of agricultural uses provided that:
1. the development meets the criteria of Article X.A. through C.; and,
 2. the development meets the criteria of Article VI.M. and Article VI.N.
- G. Any applicant who meets the criteria of Article X.A. through C. and Article X.D., E., or F. shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:
1. the issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage; and,
 2. such construction below the base flood level increases risks to life and property; and,
 3. the applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks, and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.
- H. Appeal Procedure for Administrative and Variance Appeals
1. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party within thirty days after receipt of a written decision of the Code Enforcement Officer or Planning Board.
 2. Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the documents constituting the record of the decision appealed from.
 3. The Board of Appeals shall hold a public hearing on the appeal within thirty-five days of its receipt of an appeal request.
 4. The person filing the appeal shall have the burden of proof.
 5. The Board of Appeals shall decide all appeals within thirty-five days after the close of the hearing and shall issue a written decision on all appeals.
 6. The Board of Appeals shall submit to the Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.

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

ARTICLE XI - ENFORCEMENT AND PENALTIES

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

ARTICLE XII - VALIDITY AND SEVERABILITY

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

ARTICLE XIII - CONFLICT WITH OTHER ORDINANCES

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

ARTICLE XIV - DEFINITIONS

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

Accessory Structure - a structure which is on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure.

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

Agricultural Structure - structures that are used exclusively for agricultural purposes or uses in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock. Structures that house tools or equipment used in connection with these purposes or uses are also considered to have agricultural purposes or uses.

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

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

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

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

Building - see **Structure**.

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

Coastal AE Zone - The portion of the Coastal High Hazard Area with wave heights between 1.5 feet and 3.0 feet and bounded by a line labeled the "Limit of Moderate Wave Action" (LiMWA) on a Flood Insurance Rate Map (FIRM). VE Zone floodplain construction standards are applied to development, new construction, and substantial improvements in the Coastal AE Zone.

Coastal High Hazard Area - An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. Coastal High Hazard Areas are designated as Zone VE and Zone AE bounded by a line labeled "Limit of Moderate Wave Action" (LiMWA) on a Flood Insurance Rate Map (FIRM).

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

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

Containment Wall - a wall surrounding all sides of an above ground tank to contain any spills or leaks.

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

Elevated Building - a non-basement building that is:

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

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

Elevation Certificate - an official form (FEMA Form FF-206-FY-22-152, as amended) that is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program.

Existing Manufactured Home Park or Subdivision - a manufactured home park or subdivision that was recorded in the deed registry prior to the adoption date of the community's first floodplain management regulations.

Flood or Flooding -

- a. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 1. The overflow of inland or tidal waters.
 2. The unusual and rapid accumulation or runoff of surface waters from any source.

- b. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph a.1. of this definition.

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

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

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

Floodplain or Floodprone Area - any land area susceptible to being inundated by water from any source (see **Flood or 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 a floodplain ordinance, grading ordinance, and erosion control ordinance), and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

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

Floodway - see **Regulatory Floodway**.

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

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

Functionally Dependent Use - a use 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:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 1. By an approved state program as determined by the Secretary of the Interior, or,
 2. Directly by the Secretary of the Interior in states without approved programs.

Limit of Moderate Wave Action (LiMWA) - The landward limit of the 1.5 foot breaking wave within a Coastal AE Zone. These areas are bounded by a line labeled "Limit of Moderate Wave Action" (LiMWA) on a Flood Insurance Rate Map (FIRM). The LiMWA line delineates that portion of the Special Flood Hazard Area (SFHA) landward of a VE zone in which the principal sources of flooding are astronomical high tides, storm surges, or tsunamis, not riverine sources. These areas may be subject to wave effects, velocity flows, erosion, scour, or combinations of these forces. The floodplain development and construction standards for VE Zones will be applied in the Coastal AE Zone.

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

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

Manufactured Home - a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term manufactured home also includes

park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

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

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

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

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

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

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

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

Recreational Vehicle - a vehicle that is:

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

Regulatory Floodway -

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

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

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

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

Structure - 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 percent of the market value of the structure before the damage occurred.

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

- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or,

- b. Any alteration of a Historic Structure, provided that the alteration will not preclude the structure's continued designation as a historic structure, and a variance is obtained from the Board of Appeals.

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

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

ARTICLE XV - ABROGATION

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

ARTICLE XVI - DISCLAIMER OF LIABILITY

The degree of flood protection required by the ordinance is considered reasonable but does not imply total flood protection.



Federal Emergency Management Agency

Washington, D.C. 20472

December 20, 2023

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

IN REPLY REFER TO:
19P

Jonathan Anderson
Chairperson, Town Council
Town of Scarborough
P.O. Box 360
Scarborough, Maine 04070

Community Name: Town of Scarborough,
Cumberland County,
Maine
Community No.: 230052
Map Panels Affected: See FIRM Index

Dear Chairperson Anderson:

This is to notify you of the final flood hazard determination for Cumberland County, Maine (All Jurisdictions), in compliance with Title 44, Chapter I, Part 67, Section 67.11, Code of Federal Regulations (CFR). This section requires that notice of final flood hazards shall be sent to the Chief Executive Officer of the community, all individual appellants, and the State Coordinating Agency, and shall be published in the *Federal Register*.

The statutory 90-day appeal period that was initiated for your community when the Department of Homeland Security's Federal Emergency Management Agency (FEMA) published a notice of proposed flood hazard determinations for your community in the local newspaper has elapsed. FEMA did receive an appeal regarding the proposed flood hazard determinations during that time. The technical data submitted in support of the appeal has been evaluated and the appeal has been resolved in accordance with the requirements of 44 CFR Part 67. We determined that changes were warranted based on the submitted data and have incorporated the applicable changes on the final copies of the Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM) for your community.

Accordingly, the flood hazard determinations for your community are considered final. The final notice for flood hazard determinations will be published in the *Federal Register* as soon as possible. The FIS report and FIRM for your community will become effective on June 20, 2024. Before the effective date, we will send your community final printed copies of the FIS report and FIRM. For insurance purposes, the community number and new suffix code for the panels being revised are indicated on the FIRM and must be used for all new policies and renewals.

Because the FIS report for your community has been completed, certain additional requirements must be met under Section 1361 of the National Flood Insurance Act of 1968, as amended, within 6 months from the date of this letter.

It must be emphasized that all the standards specified in 44 CFR Part 60.3(e) of the National Flood Insurance Program (NFIP) regulations must be enacted in a legally enforceable document. This includes adoption of the current effective FIS report and FIRM to which the regulations apply and other modifications made by this map revision. Some of the standards should already have been enacted by your community in order to establish initial eligibility in the NFIP. Your community can meet any additional requirements by taking one of the following actions in this Paragraph of the NFIP regulations:

1. Amending existing regulations to incorporate any additional requirements of 44 CFR Part 60.3(e);
2. Adopting all the standards of 44 CFR Part 60.3(e) into one new, comprehensive set of regulations; or
3. Showing evidence that regulations have previously been adopted that meet or exceed the minimum requirements of 44 CFR Part 60.3(e).

Also, prior to the effective date, your community is required, as a condition of continued eligibility in the NFIP, to adopt or show evidence of adoption of the floodplain management regulations that meet the standards of 44 CFR Part 60.3(e) of the NFIP regulations by the effective date of the FIRM. These standards are the minimum requirements and do not supersede any State or local requirements of a more stringent nature.

Many states and communities have adopted building codes based on the International Codes (I-Codes); the model I-Codes (2009 and more recent editions) contain flood provisions that either meet or exceed the minimum requirements of the NFIP for buildings and structures. The model codes also contain provisions, currently found in an appendix to the International Building Code, that apply to other types of development and NFIP requirements. In these cases, communities should request review by the NFIP State Coordinator to ensure that local floodplain management regulations are coordinated (not duplicative or inconsistent) with the State or Local building code. FEMA's resource, *Reducing Flood Losses through the International Code: Coordinating Building Codes and Floodplain Management Regulations, 5th Edition (2019)*, provides some guidance on this subject and is available at <https://www.fema.gov/emergency-managers/risk-management/building-science/building-codes/flood>.

Communities that fail to enact the necessary floodplain management regulations will be suspended from participation in the NFIP and subject to the prohibitions contained in Section 202(a) of the Flood Disaster Protection Act of 1973 (Public Law 93-234) as amended, and 44 CFR Part 59.24.

To assist your community in maintaining the FIRM, we have enclosed a Summary of Map Actions (SOMA) to document previous Letters of Map Change (LOMC) actions (i.e., Letters of Map Amendment, Letters of Map Revision) that will be affected when the revised FIRM panels referenced above become effective. If no LOMCs were issued previously for your community, you are receiving a SOMA for informational purposes only.

Once the FIS report and FIRM are printed and distributed, the digital files containing the flood hazard data for the entire county can be provided for use in a computer mapping system. These files can be used in conjunction with other thematic data for floodplain management purposes, insurance requirements, and many other planning applications. Copies of the digital files of the FIRM panels may be obtained by calling our FEMA Mapping and Insurance eXchange (FMIX), toll free, at (877) 336-2627 (877-FEMA MAP) or by visiting the Map Service Center at <https://www.msc.fema.gov>. In addition, your community may be eligible for additional credits under our Community Rating System if you implement your activities using digital mapping files.

For assistance with your floodplain management ordinance or enacting the floodplain management regulations, please contact Susan Baker, NFIP State Coordinator for Maine by telephone at (207) 287-8063. If you should require any additional information, we suggest that you contact the Director, Mitigation Division of FEMA, Region 1 at (617) 956-7576 for assistance. If you have any questions concerning mapping issues in general or the enclosed SOMA, please call our FMIX at the telephone number shown above. Additional information and resources you may find helpful regarding the NFIP and floodplain management can be found on our website at <https://www.fema.gov/flood-maps>. Copies of these documents may also be obtained by calling our FMIX.

Sincerely,



Luis V. Rodriguez, P.E.
Director, Engineering and Modeling Division
Risk Management Directorate | Resilience

Enclosure:
Final SOMA

cc: Community Map Repository
Autumn Speer, Planning Director, Town of Scarborough

FINAL SUMMARY OF MAP ACTIONS

Community: SCARBOROUGH, TOWN OF

Community No: 230052

To assist your community in maintaining the Flood Insurance Rate Map (FIRM), we have summarized below the effects of the enclosed revised FIRM panels(s) on previously issued Letter of Map Change (LOMC) actions (i.e., Letters of Map Revision (LOMRs), Letter of Map Revision based on Fill (LOMR-Fs), and Letters of Map Amendment (LOMAs)) that will be affected when the revised FIRM becomes effective on June 20, 2024.

1. LOMCs Incorporated

The modifications effected by the LOMCs listed below will be reflected on the revised FIRM. In addition, these LOMCs will remain in effect until the revised FIRM becomes effective.

LOMC	Case No.	Date Issued	Project Identifier	Original Panel	Current Panel
			NO CASES RECORDED		

2. LOMCs Not Incorporated

The modifications effected by the LOMCs listed below will not be reflected on the revised FIRM panels or will not be reflected on the revised FIRM panels because of scale limitations or because the LOMC issued had determined that the lot(s) or structure(s) involved were outside the Special Flood Hazard Area, as shown on the FIRM. These LOMCs will remain in effect until the revised FIRM becomes effective. These LOMCs will be revalidated free of charge 1 day after the revised FIRM becomes effective through a single revalidation letter that reaffirms the validity of the previous LOMCs.

FINAL SUMMARY OF MAP ACTIONS

Community: SCARBOROUGH, TOWN OF

Community No: 230052

2A. LOMCs on Revised Panels

LOMC	Case No.	Date Issued	Project Identifier	Original Panel	Current Panel
LOMA	190100004D&D	01/17/1996	36 OLD NECK ROAD	2300520021D	23005C0804F
LOMA	98-01-196A	03/04/1998	2A WILDROSE LANE - LOT 1B	2300520021D	23005C0808F
LOMA	98-01-828A	08/12/1998	221 SPURWINK ROAD - ASSESSMENT MAP R-97, LOT 14	2300520010D	23005C0809F
LOMA	99-01-712A	05/07/1999	PROPERTY MAP U.13 - LOT 1A	2300520021D	23005C0804F
LOMA	00-01-0174A	12/17/1999	101 EAST GRAND AVENUE	2300520023D	23005C0811F
LOMA	00-01-0846A	09/12/2000	7 WILDROSE LANE	2300520010D	23005C0808F
LOMA	04-01-1182A	06/07/2004	LOT 66, SECTION 9, OCEAN VIEW HARBOR -- 7 CATHERINE DRIVE	2300520021D	23005C0812F
LOMA	06-01-0090A	11/16/2005	1 CHASEDEER LANE	2300520021D	23005C0804F
LOMA	06-01-B154A	02/23/2006	Tax Assessor's Map R098, Parcel 12 (ME)	2300520010D	23005C0809F
LOMA	06-01-B139A	04/21/2006	6 Wiley Way -- Tax Map R098, Parcel 10 (ME)	2300520010D	23005C0809F
LOMA	08-01-1273A	11/06/2008	9 THUNDER ROAD	2300520015D	23005C0777F
LOMA	09-01-0523A	03/26/2009	TAX MAP U-36, LOT 6 -- 20 MILLIKEN ROAD	2300520020D	23005C0784F
LOMA	12-01-0211A	12/06/2011	TAX MAP R077, LOT 19 -- 52 US ROUTE 1	2300520010D	23005C0802F
LOMA	12-01-0348A	02/09/2012	TAX MAP R096, LOTS 5 & 9 --- 302 HIGHLAND AVENUE	2300520010D	23005C0806F 23005C0808F
LOMA	13-01-1784A	05/16/2013	TAX MAP R100, LOT 5 -- 83 SPURWINK ROAD	2300520022D	23005C0808F
LOMA	14-01-1035A	12/30/2013	Lot Lot 36, Olde Millbrook Subdivision - 14 Olde Mill Road	2300520021D	23005C0804F
LOMA	14-01-1437A	03/18/2014	TAX MAP 73, LOT 14 -- 59 BLACK POINT ROAD	2300520021D	23005C0804F

FINAL SUMMARY OF MAP ACTIONS

Community: SCARBOROUGH, TOWN OF

Community No: 230052

LOMC	Case No.	Date Issued	Project Identifier	Original Panel	Current Panel
LOMA	14-01-3039A	09/16/2014	LOT 5 - 14 Milliken Road	2300520020D	23005C0784F
LOMA	14-01-3184A	09/25/2014	TAX MAP R-90, LOT 16C -- 6 OLD NECK ROAD	2300520022D	23005C0812F
LOMA	15-01-1668A	06/29/2015	8 WILEY WAY	2300520010D	23005C0809F
LOMA	16-01-0747A	02/03/2016	BEAVER CREEK SUBDIVISION, LOT 2A -- 4 WILDROSE LANE	2300520010D	23005C0808F
LOMA	16-01-1974A	08/12/2016	82 FOGG ROAD	2300520021D	23005C0808F
LOMA	17-01-0451A	12/22/2016	15 THUNDER ROAD	2300520015D	23005C0777F
LOMA	17-01-1417A	05/19/2017	OCEAN VIEW HARBOR, SECTION 3, LOT 12 -- 40 OLD NECK ROAD	2300520021D 2300520022D	23005C0812F
LOMA	17-01-2528A	10/02/2017	11 STARBIRD ROAD	2300520010D	23005C0809F
LOMA	17-01-2680A	10/24/2017	BEAVER CREEK SUBDIVISION, LOT 3 -- 6 WILDROSE LANE	2300520010D	23005C0808F
LOMR-F	18-01-0960A	04/02/2018	9 CANTERBURY LANE	2300520021D 2300520022D	23005C0808F
LOMA	19-01-0878A	04/19/2019	17 MILLIKEN ROAD	2300520020D	23005C0784F
LOMA	19-01-1152A	06/13/2019	17 MILLIKEN ROAD (GARAGE)	2300520020D	23005C0784F
LOMA	20-01-0300A	01/10/2020	19 MILLIKEN ROAD	2300520020D	23005C0784F
LOMA	20-01-1544A	09/08/2020	Lot 86, Block -/2, Olde Millbrook Subdivision -- 17 Fern Circle	2300520021D	23005C0804F
LOMA	21-01-0353A	01/15/2021	6 ROSE HILL WAY	2300520020D	23005C0784F

2B. LOMCs on Unrevised Panels

LOMC	Case No.	Date Issued	Project Identifier	Original Panel	Current Panel
			NO CASES RECORDED		

FINAL SUMMARY OF MAPACTIONS

Community: SCARBOROUGH, TOWN OF

Community No: 230052

3. LOMCs Superseded

The modifications effected by the LOMCs listed below have not been reflected on the Final revised FIRM panels because they are being superseded by new or revised flood hazard information or the information available was not sufficient to make a determination. The reason each is being superseded is noted below. These LOMCs will no longer be in effect when the revised FIRM becomes effective.

LOMC	Case No.	Date Issued	Project Identifier	Reason Determination Will be Superseded
LOMA	195100098D&D	05/20/1988	65 FOGG ROAD	2
102	1-89-13	06/21/1989	V-ZONE DETERMINATION FOR FIRM PANEL 0022 - AT HIGGINS BEACH, BERENSON PROPERTY	4
102	1-89-12	06/21/1989	V-ZONE DETERMINATION FOR FIRM PANEL 0022 - AT HIGGINS BEACH, GUSTAFSON PROPERTY	4
LOMA	199300047R01	11/12/1992	8 MORNING STREET	6
102A	93-01-047P	11/01/1993	LCX REALTY, INC. PROPERTY OFF KING ST., PINE POINT	4
LOMA	95-01-004A	12/14/1994	UNIT 68, BUILDING 3 - SANDPIPER 2 CONDO	2
LOMA	199500493R01	01/17/1996	24 CLAY PITS RD	6
102A	96-01-069P	11/18/1996	LIBBY RIVER/ATLANTIC OCEAN - PINTAIL POINT SUBDIVISION	4
LOMA	500009425R01	06/12/1997	9 FERN CIRCLE	4
LOMA	500012805R01	07/31/1997	24 CLAY PITS RD	4
LOMA	98-01-1038A	02/03/1999	SANDPIPER II CONDOMINIUMS	4
LOMR-F	00-01-0528A	06/08/2000	67 FOGG ROAD	6
LOMA	01-01-0130A	12/05/2000	5 HAMPTON CIRCLE	2
LOMA	01-01-1228A	09/05/2001	LOT 6, DUNEFIELD II--6 DUNEFIELD LANE	4
LOMA	01-01-1174A	09/14/2001	#7 AVENUE SEVEN	2

FINAL SUMMARY OF MAP ACTIONS

Community: SCARBOROUGH, TOWN OF

Community No: 230052

LOMC	Case No.	Date Issued	Project Identifier	Reason Determination Will be Superseded
102	01-01-045P	11/19/2001	FOGG, SILVER & S. BRANCH BROOKS - RIVER WOODS SUBD.	4
LOMA	02-01-1794A	10/30/2002	11 HEMLOCK CIRCLE	2
LOMA	03-01-0300A	12/20/2002	54 WINNOCKS NECK ROAD	2
LOMA	03-01-1740A	08/28/2003	LOT 63, OLDE MILLBROOK SUBDIVISION--17 HEMLOCK CIRCLE	2
LOMA	04-01-0222A	11/17/2003	5 FERN CIRCLE	3
LOMA	04-01-0396A	01/02/2004	20 CLAY PITS ROAD	4
102	04-01-031P	06/28/2004	ATLANTIC OCEAN - MOISTER PROPERTY	4
LOMA	04-01-1450A	08/19/2004	52 WINNOCKS NECK ROAD	2
LOMA	06-01-0091A	11/16/2005	40 CLAY PITS ROAD -- LOT 4A	2
LOMA	06-01-0093A	11/22/2005	42 CLAY PITS ROAD	2
LOMA	06-01-B127A	06/13/2006	7 Starbird Road -- Tax Map R099, Lot 6	2
LOMA	06-01-B839A	09/19/2006	1 RIVER BEND LANE (ME)	2
LOMA	06-01-B879A	10/12/2006	14 PARTRIDGE LANE -- Lot 94, Olde Millbrook (JEG)	2
LOMA	07-01-0770A	05/29/2007	LOT 95, OLDE MILLBROOK -- 18 PARTRIDGE LANE (ME)	2
LOMA	08-01-0513A	04/29/2008	OLDE MILLBROOK, LOT 68 -- 7 HEMLOCK CIRCLE	2
LOMA	09-01-0320A	12/18/2008	446 BLACKPOINT ROAD -- TAX MAP U-17, LOT 3	2
LOMA	09-01-0404A	02/03/2009	PILLSBURY SHORES PINE POINT, LOT 69 -- 81 KING STREET	2

FINAL SUMMARY OF MAP ACTIONS

Community: SCARBOROUGH, TOWN OF

Community No: 230052

LOMC	Case No.	Date Issued	Project Identifier	Reason Determination Will be Superseded
LOMA	09-01-1276A	08/06/2009	TAX MAP U23, LOT 111 – 27 EAST GRAND AVENUE	2
LOMA	09-01-1553A	11/10/2009	Scarborough Tax map U007 Lot 34 Deed Book 10 425 Page 312	2
LOMA	10-01-1092A	06/15/2010	537 U.S. ROUTE 1	2
LOMA	10-01-1245A	07/08/2010	3 HAMPTON CIRCLE	3
LOMA	10-01-1752A	08/10/2010	LOT 62, OLDE MILLBROOK -- 19 HEMLOCK CIRCLE	2
LOMA	10-01-1980A	09/02/2010	LOT 65, OLDE MILLBROOK--13 HEMLOCK CIRCLE	2
LOMA	10-01-2044A	10/05/2010	378 Pine Point Road	4
LOMA	11-01-0332A	01/04/2011	71 EAST GRAND AVENUE	3
LOMA	11-01-0168A	01/25/2011	FISHERMANS COVE SUBD., LOTS 1, 2, & 3 – 82 KING STREET	4
LOMA	11-01-0661A	02/10/2011	LOT 1 & UNLABELED LAND FRONTING ON MOORS POINT ROAD	2
LOMA	11-01-1837A	04/25/2011	Lot 4, Plan of Sea Meadow Subdivision Subdivision - 3 Sea Meadow Lane	2
LOMA	11-01-2350A	08/11/2011	MAP U-22, LOT 42 – 9 AVENUE 4	2
LOMA	12-01-0995A	02/16/2012	6 SACCARAPPA LANE	2
LOMA	12-01-1259A	04/17/2012	MAP U-1, LOT 104 --- 42BAYVIEW AVENUE	4
LOMA	12-01-2252A	09/11/2012	TAX MAP U002, LOT 125A -- 8 MORNING STREET	2
LOMA	13-01-1165A	03/19/2013	TAX MAP R090, LOT 22A -- 1 WHISPERING SURF LANE	2
LOMA	13-01-1668A	04/11/2013	TAX MAP 4-001, PARCEL 103 -- 3 MORNING STREET	2

FINAL SUMMARY OF MAP ACTIONS

Community: SCARBOROUGH, TOWN OF

Community No: 230052

LOMC	Case No.	Date Issued	Project Identifier	Reason Determination Will be Superseded
LOMA	13-01-1912A	06/13/2013	TAX MAP U-22, PARCEL 16 -- 34 JONES CREEK DRIVE	2
LOMA	13-01-1987A	06/18/2013	LOT 3 - 38 Clay Pits Road	2
LOMA	13-01-2739A	10/17/2013	TAX MAP R-90, LOT 16C -- 6 OLD NECK ROAD	6
LOMA	13-01-3039A	10/31/2013	LOT Parcel 118D, BLOCK map U22, Pine Point - 19 East Grand Ave	6
LOMA	14-01-0677A	12/17/2013	Units 16 & 17, Pine Point Tourist Court Condos - 19 East Grand Avenue	6
LOMA	14-01-0731X	01/07/2014	LOT PARCEL 118D, BLOCK U22, PINE POINT - 19 EAST GRAND AVENUE	6
LOMA	14-01-1269A	03/11/2014	TAX MAP U21, PARCEL 15 -- 78 KING STREET	2
LOMA	14-01-1440A	04/03/2014	TAX MAP U22, PARCEL 90 -- 4 KING STREET	4
LOMA	14-01-1971A	04/22/2014	LOT PARCEL 118D, BLOCK U22, PINE POINT - 19 EAST GRAND AVENUE (UNITS 16&17)	2
LOMA	14-01-2687A	08/05/2014	TAX MAP U002, PARCEL 33 -- 36 BAYVIEW AVENUE	2
LOMA	14-01-3637A	10/07/2014	Lot 113, William Moulton's Plan of Pine Point Subdivision - 36 Jones Creek Drive	2
LOMA	14-01-3258A	10/14/2014	TAX MAP U-22, PARCEL 28 -- 62 JONES CREEK DRIVE	2
LOMA	14-01-3353A	10/21/2014	15 EAST GRAND AVENUE	2
LOMA	14-01-3331A	12/18/2014	OCEAN VIEW HARBOR, LOT 11 -- 38 OLD NECK ROAD	2
LOMA	15-01-0998A	02/19/2015	13 EAST GRAND AVENUE	2
LOMA	15-01-1434A	04/16/2015	Lot 97, Olde Mill Brook Subdivision - 19 Hawthorn Circle	4
LOMA	17-01-0173A	11/03/2016	423 Black Point Road	2

FINAL SUMMARY OF MAPACTIONS

Community: SCARBOROUGH, TOWN OF

Community No: 230052

LOMC	Case No.	Date Issued	Project Identifier	Reason Determination Will be Superseded
LOMA	17-01-0712A	02/08/2017	3 SOUTHGATE BUSINESS PARK CONDOMINIUM- 3 SOUTHGATE ROAD	4
LOMA	17-01-1134A	03/22/2017	3 East Grand Avenue	2
LOMA	17-01-1149A	04/19/2017	5 MOORS POINT ROAD	2
LOMA	17-01-1294A	05/05/2017	Pine Point Tourist Court Condominiums Subdivision - 19 East Grand Avenue	2
LOMA	17-01-2263A	08/30/2017	8 MOORS POINT ROAD	2
LOMA	18-01-0594A	12/21/2017	5 Avenue Six	2
LOMA	18-01-0766A	01/24/2018	Lot 46, William Moulton's plan of Pine Point Subdivision - 74 King Street	2
LOMA	20-01-0276A	01/03/2020	OCEAN VIEW HARBOR, SECTION 8, LOT 49 - 3 RHONDA DRIVE	2
LOMA	22-01-0797A	09/06/2022	59 EAST GRAND AVENUE	2
LOMA	22-01-1058A	09/07/2022	35 East Grand Avenue	2

1. Insufficient information available to make a determination.
2. Lowest Adjacent Grade and Lowest Finished Floor are below the proposed Base Flood Elevation.
3. Lowest Ground Elevation is below the proposed Base Flood Elevation.
4. Revised hydrologic and hydraulic analyses.
5. Revised topographic information.
6. Superseded by another LOMC.

4. LOMCs To Be Redetermined

The LOMCs in Category 2 above will be revalidated through a single revalidation letter that reaffirms the validity of the determination in the previously issued LOMC. For LOMCs issued for multiple lots or structures where the determination for one or more of the lots or structures is no longer valid, the LOMC cannot be revalidated through this administrative process. Therefore, we will review the data previously submitted for the LOMC requests listed below and if appropriate issue a new determination for the affected properties after the effective date of the revised FIRM.

LOMC	Case No.	Date Issued	Project Identifier	Original Panel	Current Panel
			NO CASES RECORDED		



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
BUREAU OF RESOURCE INFORMATION & LAND USE PLANNING
93 STATE HOUSE STATION
AUGUSTA, MAINE 04333

JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

January 8, 2024

Nicholas McGee, Town Council Chair
Town of Scarborough
P.O. Box 360
Scarborough, ME 04070

[E-Mail Return Receipt Requested]

RE: New FEMA Flood Insurance Rate Maps and requirement for adoption into local ordinance for compliance with the National Flood Insurance Program (NFIP)

Dear Town Council Chair McGee:

Your community should have received a Letter of Final Determination (LFD) from the Federal Emergency Management Agency (FEMA) which sets the effective date of the new Digital Flood Insurance Rate Maps (DFIRMs) for Cumberland County for June 20, 2024. The LFD marks the beginning of a six-month time period for communities to update their local Floodplain Management Ordinances to reflect any changes since the last ordinance was adopted and to incorporate the new map date. **Your community must adopt an updated Floodplain Management Ordinance which references the new map date on or before June 20, 2024, in order to avoid being immediately suspended from the NFIP.**

Participation in the NFIP provides protection to those members of your community who may be affected by flooding. In addition, federal flood insurance is available to those who have federally backed mortgages in the floodplain. Another important benefit is your community's eligibility for disaster funding and low interest loans when your county is in a declared disaster area. This is all possible by way of your community's commitment to adopt, administer, and enforce its floodplain ordinance and your commitment to regulate development within flood prone areas.

Adoption of the new maps prior to the final map date will assure uninterrupted and continued participation in the NFIP. Enclosed is a copy of the most current state model Floodplain Management Ordinance that has been customized specifically for your community. **Please review this document carefully.** The enclosed ordinance contains all the changes that have occurred at the federal and state level since your ordinance was last adopted. Since FEMA has

SUE BAKER, PROGRAM MANAGER
MAINE FLOODPLAIN MANAGEMENT PROGRAM
17 ELKINS LANE, WILLIAMS PAVILLION



PHONE: (207) 287-2801
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WWW.MAINE.GOV/DACF/

very specific requirements regarding ordinance language, we encourage communities to adopt the ordinance without changes. However, if you would like to make any changes, you should discuss them with this office prior to local consideration. If the community changes the numbering system, a draft should be provided to this office for review. This is to ensure that the ordinance remains compliant and contains the correct cross references. Please make sure your community does not adopt any prior versions of the ordinance that we may have previously sent to your community.

We filled in the application fee (Article III) and permitting authority (Article II) using the ordinance that is in effect now for your community. The application fee is set by the municipality so if you would like to review other fee options or change it, just let us know.

Some communities have expressed concern about adopting maps that do not become effective until several months after they are adopted. We highly recommend that the community set the effective date of the ordinance to coincide with the day the new maps become effective.

Once your ordinance has been adopted and certified by the Town Clerk, please send this office an electronic copy (if possible) and one clerk certified printed copy. We will provide copies to the FEMA regional office and the regional planning commission. An electronic copy will be filed here at the Maine Floodplain Management Program.

If you have not already done so, please provide us with contact information for the person who will be responsible locally for coordinating the ordinance update process. We would also like to know the scheduled dates for your public hearing and town meeting as we must track this information for the affected communities. Please contact Janet Parker at 287-9981 or janet.parker@maine.gov as soon as this information is available.

Over the next few months, we expect to host at least one public outreach meeting in the Cumberland County area. This will be a public informational session so that we can answer questions as to how folks will be affected by the new maps, particularly with regard to flood insurance. We hope you will have at least one local official in attendance and that you'll provide notice so that property owners have the opportunity to get their individual questions answered. Please feel free to contact me (287-8063 or sue.baker@maine.gov) or Janet (287-9981 or janet.parker@maine.gov) at any time throughout this process if you have questions or need additional assistance.

Best Regards,



Sue Baker, CFM
State NFIP Coordinator

Enclosures: Customized 2023 Model Ordinance
Adoption Instructions

Update of Ordinance Changes
Optional/Alternate Language

Cc: Thomas Hall, Town Manager
Tody Justice, Town Clerk
Autumn Speer, Planning Director
Brian Longstaff, Zoning Administrator
Katie Rand, FEMA Region I
Greater Portland Council of Governments

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – APRIL 3, 2024
HYBRID REGULAR MEETING – 7:00 P.M.

Order No. 24-036. Move approval of the first reading to adopt new Chapter 1104B – the Town of Scarborough Commercial Property Assessed Clean Energy Program (C-Pace) and authorize the Town Manager to enter into a Participation Agreement with Efficiency Maine on behalf of the Town of Scarborough and schedule a public hearing for Wednesday, April 17, 2024.
[Sustainability Coordinator]

Sustainability Coordinator

Ought to Pass

Sponsor

Recommendation

04/03/2024 – Vote:

First Reading/Vote

04/17/2024

Public Hearing

05/01/2024

Second Reading/Final Approval/Vote

Scarborough Town Council Meeting

Council Meeting Date: April 3, 2024

ACTION ITEM: Order No. 24-036.

SUBJECT:

First reading and schedule a public hearing to adopt new Chapter 1104B – the Town of Scarborough Commercial Property Assessed Clean Energy Program (C-Pace) and authorize the Town Manager to enter into a Participation Agreement with Efficiency Maine on behalf of the Town of Scarborough. *[Sustainability Coordinator]*

PURPOSE:

To review the proposed new Chapter 1104B Commercial Property Assessed Clean Energy Program Ordinance which is required for property owners to participate in the program.

BACKGROUND:

In 2021, the Legislature enacted [L.D. 340, An Act to Allow for the Establishment of Commercial Property Assessed Clean Energy Programs](#) (The “C-PACE Act”). The C-PACE Act authorizes Efficiency Maine Trust (the “Trust”), a third party contracted by the Trust, or a municipality that has adopted a C-PACE ordinance to establish a C-PACE program.

Commercial PACE (C-PACE) means commercial property assessed clean energy. C-PACE is an economic development tool for municipalities to encourage energy-efficient buildings and create a more competitive environment for retaining and attracting new businesses by lowering energy costs.

A Municipality can: (1) Establish its own C-PACE program and administer the functions of the C-PACE Program itself; or, (2) Participate in the Efficiency Maine Trust C-PACE Program and enter into a contract with the Trust to administer certain functions of the C-PACE Program for the Municipality.

The Sustainability Committee and staff recommend adopting under option 2.

In option 2, Municipalities are relieved of the majority of administrative burdens while still able to stimulate the adoption of energy savings improvements for commercial properties within their communities. Under both options 1 and 2, Municipalities wishing to participate in the C-PACE Program must adopt a C-PACE Ordinance as required by the Maine C-PACE Act. The Trust has developed a model C-PACE Ordinance.

A municipality that wishes to exercise option 2 must also enter into a C-PACE Municipality Participation Agreement with the Trust that establishes the Trust as the Municipality’s C-PACE Program Administrator for certain designated functions.

- 1. Project Initiation:** The municipality must execute a C-PACE Assessment Agreement, along with the Property Owner and its Capital Provider, for each C-PACE project within their municipality. The C-PACE Assessment Agreement authorizes the creation of a C-

PACE Lien on the Property receiving the Energy Savings Improvements. The process of completing this program responsibility is as follows:

- During the development of a C-PACE Project, the Capital Provider and Property Owner will sign the C-PACE Assessment Agreement.
- The Municipality will then sign the C-PACE Assessment Agreement, approved as to form and substance by the Municipality.
- All parties must sign the C-PACE Assessment Agreement prior to the submission of a C-PACE project application to Efficiency Maine, though the effectiveness of the Agreement is conditioned on final project approval by Efficiency Maine and closing of the C-PACE loan.
- Once a project approval is provided by Efficiency Maine and the C-PACE financing transactions closes, a notice of the C-PACE Agreement will be filed in the registry of deeds, which filing will create a lien on the Property implementing the Energy Savings Improvements until the amounts due under the C-PACE Financing are paid in full. The form C-PACE Assessment Agreement places the obligation for recording the Notice of C-PACE Agreement on the Capital Provider.

Annual C-PACE Assessments and Collections: The municipality will not need to finance or fund any C-PACE projects and will incur no liability for payment of the loan. The C-PACE Assessment Agreement details the responsibilities of the Municipality and Capital Provider with regard to billing and collection of the C-PACE assessments, but in summary:

The Capital Provider will provide the Municipality with a “Payment Due Notice” specifying the amount due from the Property Owner in repayment of the C-PACE loan for the subject year. The Municipality will assess the Property in the amount specified in the Payment Due Notice and designate the Capital Provider as agent for the billing of the C-PACE assessment amount and the collection of payments from the Property Owner.

The C-PACE assessment payments are to be applied by the Capital Provider to the C-PACE loan balance. The Capital Provider will provide periodic reports to the Municipality on the status of the C-PACE payments from each Property Owner and will provide notice to the Municipality of any delinquency or default of a C-PACE assessment payment.

The Capital Provider shall provide notice to the Municipality and the Property Owner when the C-PACE Financing amount has been paid in full and shall cooperate with the Municipality and the Property Owner in the preparation and recording of a release and discharge of the C-PACE Lien on the subject Property when the C-PACE Financing has been satisfied. {P2178537.1}

Default and Foreclosure: See Attachment *Municipality Participation Guide*

SUSTAINABILITY COMMITTEE REVIEW

The Sustainability Committee received an overview presentation from James Neal from Efficiency Maine at their meeting on September 27, 2023. At the meeting the Sustainability Committee requested the item move to Ordinance Committee for consideration.

ORDINANCE COMMITTEE REVIEW

Mr. Neal provide a brief overview of the program at the [Ordinance Committee Meeting on October 12, 2023 \(youtube.com\)](#). No action was taken at that time. At the request of the Sustainability Committee, the Ordinance Committee reviewed the proposal again on March 13, 2024, and recommended the draft ordinance be presented to Town Council.

More information is available at the following:

[Commercial Property Assessed Clean Energy \(C-PACE\) - Efficiency Maine](#)

FISCAL IMPACT:

No direct fiscal impact to the Town.

STATUS / PROCESS TO DATE:

- Sustainability Committee: September 27, 2023
- Ordinance Committee: October 12, 2023
- Ordinance Committee: March 20, 2024
- Town Council First Reading: April 3, 2024

PROPOSED ACTION:

Consider on first reading and schedule a public hearing on April 17, 2024, for the new Chapter 1104B Commercial Property Assessed Clean Energy Program (C-Pace). *[Sustainability Manager]*

ATTACHMENTS:

- Proposed Chapter 1104B Commercial Property Assessed Clean Energy Program Ordinance
- Municipality Participation Agreement
- Municipality Assessment Agreement
- Municipality Participation Guide

CHAPTER 1104-B
TOWN OF SCARBOROUGH
COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY
(C-PACE) ORDINANCE

BE IT HEREBY ORDAINED, by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following recommendation of the new Chapter 1104B – the Town of Scarborough Commercial Property Assessed Clean Energy Program (C-Pace), be and hereby, be adopted, as follows:

1. Purpose and authority

- A. Purpose. By and through this Ordinance, the Town of Scarborough Maine, declares as its public purpose the establishment of a municipal program to enable its citizens to participate in a Commercial Property Assessed Clean Energy (“C-PACE”) program so that owners of qualifying property can access financing for energy savings improvements to their commercial properties located in the Town. The Town declares its purpose and the provisions of this Ordinance to be in conformity with federal and state laws.
- B. Enabling legislation. The Town enacts this Ordinance pursuant to Public Law 2021, Chapter 142 of the 130th Maine State Legislature, “An Act to Allow for the Establishment of Commercial Property Assessed Clean Energy Program,” also known as “the Commercial Property Assessed Clean Energy Act” or “the Commercial PACE Act” (codified at 35-A M.R.S. §10201 *et seq.*).

2. Title

This Ordinance shall be known and may be cited as “The Town of Scarborough’s Commercial Property Assessed Clean Energy (“C-PACE”) Ordinance” (this “Ordinance”).

3. Definitions

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

Town. The Town of Scarborough.

Commercial PACE or (“C-PACE”). Means Commercial Property Assessed Clean Energy.

Commercial PACE Agreement. An agreement that authorizes the creation of a Commercial PACE Assessment on Qualifying Property and that is approved in writing by all owners of the Qualifying Property at the time of the agreement and by the municipal officers of the Town.

Commercial PACE Assessment. An assessment made against Qualifying Property to finance an Energy Savings Improvement.

Commercial PACE District. The area within which the Town establishes a Commercial PACE Program hereunder, which is all that area within the Town boundaries.

Commercial PACE Lien. A lien, secured against a Qualifying Property that is created by a Commercial PACE Assessment.

Commercial PACE Loan. A loan, payable through a Commercial PACE Assessment and secured by a C-PACE Lien, made to the owner(s) of a qualifying property pursuant to a Commercial PACE Program to fund Energy Savings Improvements.

Commercial PACE Program. A program established under this Ordinance pursuant to the Commercial PACE Act under which commercial property owners can finance Energy Savings Improvements on Qualifying Property.

Energy Savings Improvement. An improvement or series of improvements to Qualifying Property that are new and permanently affixed to Qualifying Property and that:

- A. Will result in increased energy efficiency or substantially reduced energy use and:
 - (1) Meet or exceed applicable United States Environmental Protection Agency and United States Department of Energy “Energy Star” program or similar energy efficiency standards established or approved by the Trust; or
 - (2) Involve weatherization of commercial or industrial property in a manner approved by the Trust; or
- B. Involve a renewable energy installation, an energy storage system as defined in 35-A M.R.S. § 3481(6), an electric thermal storage system, electric vehicle supply equipment or heating equipment that meets or exceeds standards established or approved by the Trust. Heating equipment that is not a Renewable Energy Installation must be heating equipment that produces the lowest carbon emissions of any heating equipment reasonably available to the property owner, as determined by the Trust, and must meet the requirements of 35-A M.R.S. §10204 (1)(B).

Qualifying Property. Real commercial property in the Town that:

- A. Does not have a residential mortgage;
- B. Is not owned by a residential customer or small commercial customer as defined in 35-A M.R.S. §3016(1)(C) and (D), respectively;
- C. Consists of 5 or more rental units if the property is a commercial building designed for residential use;
- D. Is not owned by a federal, state or municipal government or public school; and
- E. Is located in a municipality that participates in a Commercial PACE Program.

Registered Capital Provider or Capital Provider. An approved lender proving financing for the Energy Savings Improvements through a C-PACE Program and registered with Efficiency Maine Trust.

Renewable Energy Installation. A fixture, product, system, device or interacting group of devices installed behind the meter at a Qualifying Property, or on contiguous property under common ownership, that produces energy or heat from renewable sources, including but not limited to, photovoltaic systems, solar thermal systems, highly efficient wood heating systems, geothermal systems and wind systems that do not on average generate more energy or heat than the peak demand of the property.

Trust. The Efficiency Maine Trust established in 35-A M.R.S. §10103 and/or its agents, if any.

4. Program established; Amendments.

- A. Establishment. The Town hereby establishes a Commercial PACE Program allowing owners of Qualifying Property located in the Town who so choose to access financing for Energy Savings Improvements to their Qualifying Property, with such financing to be repaid through a Commercial PACE Assessment and secured by a Commercial PACE Lien.
- B. The Town may:
 - (1) Administer the functions of the Commercial PACE Program, including, but not limited to, entering into Commercial PACE Agreements with commercial property owners and collecting Commercial PACE Assessments, or designate an agent to act on behalf of the Town for such billing and collection purposes; or
 - (2) Enter into a contract with the Trust to administer some or all functions of the Commercial PACE Program for the Town, including billing and collection of Commercial PACE Assessments, subject to the limitations set forth in Section 10205, subsection 5 of the Commercial PACE Act.
- C. Amendment to or Repeal Commercial PACE Program. The Town may from time to time amend this Ordinance to use any funding sources made available to it or appropriated by it for the express purpose of its Commercial PACE Program, and the Town shall be responsible for administration of loans made from those funding sources. The Town may also repeal this Ordinance in the same manner as it was adopted, provided, however, that such repeal shall not affect the validity of any Commercial PACE Agreements entered into by the Town prior to the effective date of such repeal, or a Commercial PACE Loan or Commercial PACE Lien arising out of such Agreements.

5. Financing; Private Lenders; Terms.

C-PACE Loans may be provided by any qualified Capital Provider private lender participating in the C-PACE Program and a C-PACE Agreement may contain any terms agreed to by the lender and the property owner, as permitted by law, for the financing of Energy Savings Improvements. Unless the Town specifically designates funding sources made available to it or appropriated by it for the express purpose of its Commercial PACE Program and agrees to provide financing for Energy Savings Improvements, the Town will not finance or fund any loan under the Commercial PACE Program, and shall serve only as a program sponsor to facilitate loan repayment by including the Commercial PACE Assessment on the property tax bill for the property, and shall incur no liability for the loan.

6. Program Requirements and Administration

- A. Agreement Required. All commercial property owners seeking financing for Energy Savings Improvements on Qualifying Property pursuant to the Commercial PACE Program must enter into a Commercial PACE Agreement, approved as to form and substance by the Town, authorizing the creation of a Commercial PACE Assessment and acknowledging the creation of a Commercial PACE Lien. A notice of the Commercial PACE Agreement will be filed in the registry of deeds, which filing will create a lien until the amounts due under the agreement are paid in full.
- B. Underwriting Standards. A Commercial PACE Agreement entered into pursuant to the Commercial PACE Program must satisfy the minimum underwriting requirements of the Commercial PACE Act and such additional requirements established by the Trust.

- C. Collection of assessments. A commercial property owner participating in the Commercial PACE Program will repay the financing of Energy Savings Improvements through an assessment on their property similar to a tax bill. A Commercial PACE Assessment constitutes a lien on the Qualifying Property until it is paid in full and must be assessed and collected by the Town or its designated agent, the Trust, or a 3rd-party administrator contracted by the Trust, consistent with applicable laws. The Town may, by written agreement, designate the applicable third-party Capital Provider as its agents for the billing and collection of Commercial PACE assessment payments in satisfaction of the Commercial PACE Loan. Where Commercial PACE assessment payments are received directly by the Town along with other municipal tax payments, such payments received from property owners shall first be applied to Town taxes, assessments, and charges. The Town shall have no ownership of the Commercial PACE assessments collected except for any administrative costs provided under the Commercial PACE Program. The Town shall pay all Commercial PACE assessment payments in any calendar month to the applicable Capital Provider or the Commercial PACE program administrator within 30 days after the end of the month in which such amounts are collected. The Town shall have no obligation to make payments to any Capital Provider with respect to any Commercial PACE repayment amounts or loan obligations other than that portion of the Commercial PACE Assessment actually collected from a property owner for the repayment of a Commercial PACE Loan.

If the Trust or a 3rd-party administrator contracted by the Trust or an agent of the Town collects Commercial PACE Assessments on behalf of the Town, the Trust or agent shall periodically report to the Town on the status of the Commercial PACE Assessments in the Town and shall notify the Town of any delinquent Commercial PACE Assessments. Upon receiving notification from the Trust or agent of a delinquent Commercial PACE Assessment, the Town shall notify the holder of any mortgage on the property of the delinquent assessment.

- D. Notice; filing. A notice of a Commercial PACE Agreement must be filed in the appropriate registry of deeds. The filing of this notice creates a Commercial PACE Lien against the property subject to the Commercial PACE Assessment until the amounts due under the terms of the Commercial PACE Agreement are paid in full. The notice must include the information required by the Commercial PACE Act.
- E. Priority. A Commercial PACE Lien secures payment for any unpaid Commercial PACE Assessment and, together with all associated interest and penalties for default and associated attorney's fees and collection costs, takes precedence over all other liens or encumbrances except a lien for real property taxes of the municipality and liens of municipal sewer, sanitary and water districts. From the date of recording, a Commercial PACE Lien is a priority lien against a property, except that the priority of such a Commercial PACE Lien over any lien, except a lien for real property taxes of the Town or a lien of a municipal sewer, sanitary or water district, that existed prior to the Commercial PACE Lien is subject to the written consent of such existing lienholder.
- F. Mortgage lender notice and consent. Any financial institution holding a lien, mortgage or security interest in or other collateral encumbrance on the property for which a Commercial PACE Assessment is sought must be provided written notice of the commercial property owner's intention to participate in the Commercial PACE Program and must provide written consent to the commercial property owner and Town that the borrower may participate and enroll the collateral property in the Commercial PACE Program. This written consent must be filed in the registry of deeds and must include a written acknowledgement and understanding

by the financial institution holding the lien, mortgage or security interest in or other collateral encumbrance on the property as required by the Commercial PACE Act.

7. Collection, default; foreclosure.

- A. A Commercial PACE Assessment and any interest, fees, penalties and attorney's fees incurred in its collection must be collected in the same manner as the real property taxes of the Town. A Commercial PACE Assessment for which notice is properly recorded under this section creates a lien on the property. The portion of the assessment that has not yet become due is not eliminated by foreclosure, and the lien may not be accelerated or extinguished until fully repaid.
- (1) If a Commercial PACE Assessment is delinquent or in default and the borrower or property owner is delinquent in any tax debt due to the Town, collection may occur only by the recording of liens and by foreclosure under 36 M.R.S. §§ 942 and 943. Liens must be recorded and released in the same manner as liens for real property taxes.
 - (2) If only a Commercial PACE Assessment is delinquent but the borrower or property owner is current on payment of all municipal taxes due to the Town, then a Commercial PACE lienholder shall accept an assignment of the Commercial PACE Lien, as provided in the written agreement between Town and the Capital Provider. The assignee shall have and possess all the same powers and rights at law as the Town and its tax collector with regards to the priority of the Commercial PACE Lien, the accrual of interest and fees and the costs of collection. The assignee shall have the same rights to enforce the Commercial PACE Lien as any private party or lender holding a lien on real property, including, but not limited to, the right of foreclosure consistent with 14 M.R.S. §§ 6203-A and 6321 and any other action in contract or lawsuit for the enforcement of the Commercial PACE Lien.
- B. Judicial or nonjudicial sale or foreclosure. In the event of a judicial or nonjudicial sale or foreclosure of a property subject to a Commercial PACE Lien by a lienholder that is not a Commercial PACE lienholder, the Commercial PACE Lien must survive the foreclosure or sale to the extent of any unpaid installment, interest, penalties or fees secured by the lien that were not paid from the proceeds of the sale. All parties with mortgages or liens on that property, including without limitation Commercial PACE lienholders, must receive on account of such mortgages or liens sale proceeds in accordance with the priority established in this chapter and by applicable law. A Commercial PACE Assessment is not eliminated by foreclosure and cannot be accelerated. Only the portion of a Commercial PACE Assessment that is in arrears at the time of foreclosure takes precedence over other mortgages or liens; the remainder transfers with the property at resale.
- C. Unless otherwise agreed upon by the Capital Provider, all payments on a Commercial PACE Assessment that become due after the date of transfer by judicial or nonjudicial sale or foreclosure must continue to be secured by a lien on the property and are the responsibility of the transferee.
- D. Release of lien. The Town will discharge a Commercial PACE Lien created under the Commercial PACE Act and this Ordinance upon full payment of the amount specified in the Commercial PACE Agreement. A discharge under this subsection must be filed in the appropriate registry of deeds and must include reference to the notice of Commercial PACE Agreement previously recorded pursuant to the Commercial PACE Act and this Ordinance.

8. Liability of municipal officials; liability of Town

- (1) Notwithstanding any other provision of law to the contrary, Town officers and Town officials, including without limitation, Tax Assessors and Tax Collectors, are not personally liable to the Trust or to any other person for claims, of whatever kind or nature, under or related to a Commercial PACE Program, including without limitation, claims for or related to uncollected Commercial PACE Assessments under this Ordinance.
- (2) Other than the fulfillment of its obligations specified in a Commercial PACE Agreement, the Town has no liability to a commercial property owner for or related to Energy Savings Improvements financed under a Commercial PACE Program.

9. Conformity to Changed Standards.

This Ordinance is intended to comply with the Commercial PACE Act and the administrative rules of the Trust issued in connection with the Commercial PACE Act, as the same may be amended. If the Trust or any State or federal agency adopts standards, promulgates rules, or establishes model documents subsequent to the Town's adoption of this Ordinance and those standards, rules or model documents substantially conflict with this Ordinance, the Town shall take necessary steps to conform this Ordinance and its Commercial PACE Program to those standards, rules or model documents.

C-PACE MUNICIPALITY PARTICIPATION AGREEMENT

This C-PACE Municipality Assessment Agreement (“Agreement”), dated as of {INSERT DATE} is entered into by and between Efficiency Maine Trust, an independent quasi-state agency of the State of Maine with offices located at 168 Capitol Street, Suite 1, Augusta, ME 04330 (the “**Trust**”) and Town of Scarborough, a municipal corporation existing under the laws of the State of Maine, with offices located at 259 US Route One Scarborough, Maine 04070 (the “**Municipality**”).

WHEREAS, Title 35-A M.R.S. §§10201 et seq., enacted by PL 2021, c.142, “An Act to Allow for the Establishment of Commercial Property Assessed Clean Energy Programs” (the “**C-PACE Act**”), authorizes the Trust and municipalities adopting a Commercial PACE Ordinance (as defined in the C-PACE Act) to establish commercial PACE programs under which commercial property owners may finance Energy Savings Improvements on Qualifying Property (each as defined in the C-PACE Act and the C-PACE Program Regulations (the “**Regulations**”)) by utilizing a municipal assessment and collection mechanism to provide security for repayment of the financing pursuant to the terms of the C-PACE Act (a “**C-PACE Program**”).

WHEREAS, the Trust has developed a C-PACE Program and the Municipality has adopted a Commercial PACE Ordinance for the purpose of establishing and participating in a C-PACE Program.

WHEREAS, pursuant to the C-PACE Act, the Municipality wishes to enter into a contract with the Trust to administer certain aspects of the C-PACE Program with respect to Property Owners holding Qualified Property within the Municipality.

WHEREAS, the Trust is willing to provide certain C-PACE Program administration services for the Municipality under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Trust and Municipality agree as follows:

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms under the C-PACE Act, the Regulations, and the C-PACE Program Guidelines (the “**Guidelines**”).

1. The Trust will provide general marketing services for the C-PACE Program and provide model C-PACE Ordinances, C-PACE Agreements, and forms, documents, and educational materials for use by the Municipality and Property Owners holding Qualifying Property in the Municipality. The Trust will provide general program support for Property Owners holding Qualifying Property in the Municipality who make an application for participation in the C-PACE Program.
2. The Trust agrees to serve as Program Administrator with respect to C-PACE Program applications submitted by Property Owners holding Qualified Property in the Municipality, administering those aspects of the C-PACE Program specified herein.
3. The Trust will review applications of Capital Providers wishing to participate in the C-PACE Program in accordance with the Guidelines and approve such applications that demonstrate the capacity to meet the requirements of the Regulations). The Trust will maintain a list of approved Registered Capital Providers available to Property Owners holding Qualifying Property in the Municipality.
4. The Trust will review applications to the C-PACE Program by or on behalf of Program applicants and shall determine whether the application satisfies the requirements for a Qualifying Property and Qualifying Project under the Regulations and Guidelines. If the Trust determines that the C-PACE

Program application meets the standards and requirements set forth in the Regulations and Guidelines, the Trust will issue a Notice of Approval to the Property Owner and the Capital Provider providing the C-PACE financing.

5. For those Property Owners with a Qualifying Property in the Municipality for which a Notice of Approval is issued, the Municipality shall be required to execute a C-PACE Assessment Agreement with the Property Owner and Capital Provider pursuant to which the Municipality will agree to assess the subject Qualifying Property to facilitate repayment of the C-PACE Loan to the Capital Provider. The Municipality shall undertake such actions as required under the C-PACE Assessment Agreement and C-PACE Act as necessary to establish the C-PACE Lien and facilitate repayment of the C-PACE Loan to the Capital Provider through the assessment process.

6. The Municipality agrees to comply with the terms of the C-PACE Act and the Municipality's Commercial PACE Ordinance, including, without limitation, procedures on collection and foreclosure of C-PACE Assessments where the Property Owner also is delinquent in any tax debt due to the Municipality, and the assignment of the C-PACE Lien to the Capital Provider for collection and foreclosure where the C-PACE Assessment is delinquent but the Property Owner is current on municipal taxes. In accordance with the C-PACE Act, the Municipality agrees to release the C-PACE Lien upon full payment of the C-PACE Loan.

7. The Municipality shall provide written notice to the Trust if any property within the Municipality subject to a C-PACE Lien is delinquent in payment of the C-PACE Assessment and is subject to foreclosure on a lien for any tax debt due to the Municipality or if the Municipality makes an assignment of the C-PACE Lien to the Capital Provider.

8. Notwithstanding any provision of law to the contrary, staff or trustees of the Trust, municipal officers and municipal officials, including, without limitation, tax assessors and tax collectors, are not personally liable to the Trust or to any other person for claims, of whatever kind or nature, under or related to a C-PACE Program established under the C-PACE Act, including, without limitation, claims for or related to uncollected C-PACE Assessments.

9. Pursuant to the C-PACE Act, other than the fulfillment of its obligations specified in a C-PACE Assessment Agreement, neither the Trust nor a Municipality has any liability to a Property Owner for or related to Energy Savings Improvements financed under a C-PACE Program.

10. The services to be provided by the Trust are limited to the services specified herein. The Trust assumes no responsibility, and undertakes no liability, for the filing or recording of any required documents or instruments, the perfection of any C-PACE Liens, the terms, performance, or enforcement of any C-PACE Loan, the collection of any C-PACE Assessments, any C-PACE Loan servicing or recordkeeping, the collection of delinquent accounts, or any other matters between the Property Owner, the Capital Provider, and the Municipality.

11. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all previous discussions, understandings and agreements between the parties relating to the subject matter of this Agreement. If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, the invalidity of the clause, provision or section will not affect any of the remaining clauses, provisions or sections, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision or section has not been contained in it.

12. The term of this Agreement shall commence on the date first written above and shall continue until all C-PACE Loans issued in connection with C-PACE Program applications administered by the Trust under this Agreement have been paid in full or deemed no longer outstanding. The Municipality may discontinue participation in the C-PACE Program under this Agreement at any time on sixty (60) days' written notice to the Trust, provided that the obligations of the Municipality under this Agreement shall continue to apply to C-PACE Loans, C-PACE Liens, and C-PACE Assessments in place prior to the termination date.

IN WITNESS WHEREOF, the Municipality and the Trust have each caused this Agreement to be executed and delivered as of the date first written above.

Town of Scarborough

By:

Its:

EFFICIENCY MAINE TRUST

Michael D. Stoddard
Executive Director

C-PACE ASSESSMENT AGREEMENT

THIS C-PACE ASSESSMENT AGREEMENT (the “**Agreement**”) is made as of {INSERT DATE}, between {INSERT NAME}, a _____ organized under the laws of the State of _____ {IF FOREIGN ENTITY ADD: and authorized to do business in the State of Maine}, whose address is {INSERT ADDRESS} [IF INDIVIDUAL(S), MODIFY ACCORDINGLY] [NOTE: ALL OWNERS OF THE QUALIFYING PROPERTY MUST BE PARTY AND SIGN] ([collectively,] the “**Property Owner**”), {CAPITAL PROVIDER NAME AND ADDRESS} (together with its assigns, nominees and/or designees, the “**Capital Provider**”) and the {CITY/TOWN OF} {INSERT NAME OF PARTICIPATING MUNICIPALITY} (the “**Municipality**”), a municipal corporation existing under the laws of the State of Maine. Each of Property Owner, Capital Provider and the Municipality is referred to herein as a “**Party**” and, collectively, as the “**Parties**.”

RECITALS

A. Title 35-A M.R.S. §§10201 *et seq.* established “An Act to Allow for the Establishment of Commercial Property Assessed Clean Energy Programs” (the “**C-PACE Act**”) and authorized Efficiency Maine Trust (the “Trust”) and municipalities adopting a Commercial PACE Ordinance (as defined in the C-PACE Act) to establish commercial PACE programs under which commercial property owners may finance Energy Savings Improvements on Qualifying Property (each as defined in the C-PACE Act and the Trust’s administrative rules) by utilizing a municipal assessment and collection mechanism to provide security for repayment of the financing pursuant to the terms of the C-PACE Act. (a “**C-PACE Program**”).

B. The Trust has developed a C-PACE Program and the Municipality has adopted a Commercial PACE Ordinance for the purpose of establishing and participating in a C-PACE Program.

C. Property Owner has applied for participation in the C-PACE Program with respect to that certain property located within the Municipality as more fully described on Exhibit A to this Agreement (the “**Property**”) and to obtain C-PACE financing from the Capital Provider for the acquisition and installation of Energy Savings Improvements at the Property (the “**Project**”) in an amount up to that detailed on Exhibit A hereof (as the same may be amended in writing by the Parties), which financing will be secured by a C-PACE assessment lien (the “**C-PACE Lien**” or “**Assessment Lien**”) against the Property pursuant to the terms of the C-PACE Act.

D. Prior to closing on the C-PACE Financing (as defined below), the Trust, or its designated agent, will review the Property Owner’s C-PACE Program application and will make a determination that the proposed Project will, if installed and operated as represented, satisfy the requirements and standards as set forth in the C-PACE Program Guidelines and applicable administrative rules of the Trust, with final approval of the Project by the Trust being a condition precedent to closing of the C-PACE Financing transaction by the Parties.

E. The Capital Provider has determined that the Property Owner and the proposed Project satisfy the minimum underwriting requirements of the C-PACE Act and applicable administrative rules of the Trust and has agreed to provide a loan under the C-PACE Program for the Energy Savings Improvements to be installed at the Property (the “**C-PACE Financing**”).

F. The Municipality has determined that the Property Owner's proposed Project is in conformity with its C-PACE Ordinance and has agreed to impose the C-PACE Assessment to facilitate payment of the Property Owner's C-PACE Financing obligation to the Capital Provider.

G. The Property Owner, being all of the owners of the qualifying Property, wishes to enter this Agreement and affirm the imposition of the C-PACE Assessment and grant of the C-PACE Assessment Lien to secure the C-PACE Financing.

H. The Parties wish to confirm the process for assessment, payment, and collection of the C-PACE Financing amounts.

NOW, THEREFORE, in consideration of the foregoing and the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I - AUTHORIZATION OF C-PACE ASSESSMENT AND LIEN

Section 1.01. C-PACE Financing of Energy Savings Improvements. The Capital Provider has determined that the Property Owner and proposed Project satisfy the minimum underwriting requirements of the C-PACE Program and has agreed to provide the C-PACE Financing to the Property Owner to finance the acquisition, construction and installation of the Energy Savings Improvements, and the Property Owner hereby agrees to use the proceeds of such C-PACE Financing solely to acquire, construct, and install the Energy Savings Improvements (and to pay the allowable fees and costs required to be paid in connection therewith, including audits, energy savings improvement development, and application fees) and to cause the C-PACE Financing to be repaid on the terms set forth in the C-PACE Financing documents and this Agreement.

Section 1.02. Terms of Financing. The C-PACE Financing amount, interest rate, repayment schedule, maturity and other material terms of the C-PACE Financing are set forth in Exhibit A hereto. If the C-PACE Financing amount, interest rate, repayment schedule, maturity or other material terms of the C-PACE Financing are modified or amended by the Parties between the date of execution of this Agreement and the date of closing of the C-PACE Financing transaction, the Parties shall, as a condition of closing, execute and deliver an Amended and Restated Exhibit A in the form attached as Exhibit A-1 hereto, which Amended and Restated Exhibit A shall be incorporated herein and made part hereof.

Section 1.03. Security/Collateral for the C-PACE Financing; C-PACE Lien. To secure repayment of the C-PACE Financing, the Property Owner hereby agrees to the imposition of a C-PACE Assessment on the Property in the amount of the C-PACE Financing and hereby grants a C-PACE Lien on the Property for the benefit of and enforceable by the Municipality and Capital Provider, and its successors and assigns, pursuant to the C-PACE Act. The Parties hereby agree to cause a notice of this Agreement in the form attached hereto as Exhibit B to be recorded in the appropriate Registry of Deeds thereby perfecting the C-PACE Lien to evidence and secure the C-PACE Financing (the "**Notice of C-PACE Agreement**"). The Notice of C-PACE Agreement must be accompanied by an executed Mortgage Lender Consent, as may be required from each financial institution holding a lien, mortgage, or other collateral encumbrance on the Property, showing voluntary consent to the enrollment of the Property in the C-PACE Program, acknowledging the priority status of the C-PACE Lien, and acknowledging the foreclosure process for C-PACE liens under the C-PACE Act. The Property Owner acknowledges and agrees to the imposition of the C-PACE Assessment and C-PACE Lien on the Property as a priority lien running with the title to the Property (junior only to real property taxes and liens of municipal sewer, sanitary, and water districts) to secure the C-PACE Financing, enforceable against the Property as provided in the C-PACE Act until the amounts due under the C-PACE Financing documents are paid in full.

Section 1.04. Recording of Notice of C-PACE Agreement; Project Completion. The recording of a Notice of C-PACE Agreement creates a C-PACE Lien subject to the C-PACE Assessment and such notice may only be recorded upon closing of the C-PACE Financing transaction between Property Owner and Capital Provider. The Parties agree to execute the Notice of C-PACE Agreement in connection with closing of the C-PACE Financing transaction and the Capital Provider shall be responsible to record the Notice of C-PACE Agreement and Mortgage Lender Consent in the appropriate Registry of Deeds and to provide copies of the executed Notice of C-PACE Agreement and Mortgage Lender Consent to the Trust with 10 days after closing. The Property Owner shall be required to keep the Capital Provider apprised of Project status and completion. After the Completion Date, as set forth below, the Capital Provider, with cooperation and assistance from the Property Owner as necessary, shall prepare and submit to the Municipality and the Trust a statement certifying that the Project is complete (a “**Completion Certificate**”). The Project shall be deemed completed on the date (such date, the “**Completion Date**”) that: (i) the construction/installation of the Project is completed, (ii) the Energy Savings Improvements have been put into service, (iii) all approvals and reports required to be submitted to the Trust pursuant to the C-PACE Act, the C-PACE Program Guidelines, and administrative rules of the Trust have been submitted, and (iv) all other requirements of the C-PACE Financing documents have been met.

ARTICLE II - C-PACE FINANCING AND ASSESSMENT PAYMENTS

Section 2.01. C-PACE Financing Payments. The following governs the manner and timing of C-PACE Assessment payments:

(a) *Manner of Payments.* Property Owner shall make payments of principal and interest due under the C-PACE Financing documents by way of C-PACE Assessments to be placed against the Property each year during the term of the C-PACE Financing documents. The C-PACE Assessments (and any interest, fees, penalties, and attorney's fees incurred in its collection) will be collected in the manner set forth in this Agreement.

(b) *Capital Provider Notice.* Capital Provider shall provide the Municipality and Property Owner with written notice on or before July 1 each year specifying the total C-PACE Financing amount (principal and interest) due from the Property Owner and to be assessed against the Property for the subject tax year (the “**Payment Due Notice**”).

(c) *Municipal Assessment.* The Municipality shall make a C-PACE Assessment or Assessments against the Property in the total amount of the Payment Due Notice each year for the subject tax year. Pursuant to the C-PACE Act, the C-PACE Assessment constitutes a lien on the Property until it is paid in full. The Municipality agrees to make C-PACE Assessments against the Property for repayment of C-PACE Financing amounts to the Capital Provider and shall maintain a record of such assessments and take such other action as necessary for the establishment of liens against the Property as contemplated in the C-PACE Act.

(d) *Designation of Capital Provider as Agent to Issue C-PACE Assessment Billing and Receive C-PACE Assessment Payments.* After receipt of the Payment Due Notice from the Capital Provider, the Municipality's Assessor shall commit the C-PACE Assessment amount to the Capital Provider for billing and collection. The Municipality designates Capital Provider as its agent to issue C-PACE Assessment billing to the Property Owner in the assessed amounts due for the subject period and to receive direct payment of the C-PACE Assessment amounts, which payments shall be applied by Capital Provider to the Property Owner's repayment obligation under the C-PACE Financing documents. C-PACE Assessment billing by the Capital Provider hereunder as the

Municipality's agent shall have the same effect as if the C-PACE Assessment billing were issued by the Municipality to the Property Owner directly.

(e) *Reporting.* Capital Provider shall periodically report to the Municipality on the status of the C-PACE Assessment payments and shall notify the Municipality and the Trust promptly of any delinquent C-PACE Assessment payments.

(f) *Remittance of C-PACE Payments by Municipality to Capital Provider.* It is the intent of the Parties that the C-PACE Assessment amounts shall be paid directly by Property Owner to Capital Provider. In accordance with the C-PACE Act, the Capital Provider has a contractual right to receive C-PACE Assessment payments. If the Municipality receives C-PACE Assessment payments from the Property Owner, the Municipality shall remit such payments to the Capital Provider, which payments shall be applied by Capital Provider to the Property Owner's repayment obligation under the C-PACE Financing documents. The Municipality shall remit all C-PACE Assessment payments it receives to Capital Provider within 30 days after receipt of such payments. In no event shall the Municipality be responsible to remit or pay over to Capital Provider any amount in excess of the Assessment payments actually received by the Municipality from the Property Owner. The Municipality has no independent obligation to repay the C-PACE Financing amounts on behalf of the Property Owner. For the avoidance of doubt, pursuant to the C-PACE Act, notwithstanding any provision of law to the contrary, municipal officers and Municipal officials, including, without limitation, tax assessors, tax collectors, and treasurers, and staff or trustees of the Trust, are not personally liable to any other person for claims, of whatever kind or nature, under or related to a C-PACE program established under the C-PACE Act, including, without limitation, claims for or related to uncollected C-PACE Assessments.

(g) *Continuing Payment Obligation; No Prepayment.* The Property Owner acknowledges and agrees that (i) the C-PACE Assessment Lien against the Property shall run with the title to the Property and automatically bind all successor owners of the Property until paid in full, and (ii) the C-PACE Financing may not be prepaid in whole or in part except as set forth in the C-PACE Financing documents.

(h) *Notice of Satisfaction; Release of Lien.* The Capital Provider shall provide notice to the Municipality and the Property Owner when the C-PACE Financing amount has been paid in full and shall cooperate with the Municipality and the Property Owner in the preparation and recording of a release and discharge of the C-PACE Lien on the subject Property when the C-PACE Financing has been satisfied.

ARTICLE III - PROPERTY OWNER'S REPRESENTATIONS AND WARRANTIES

The Property Owner represents and warrants as follows, which representations and warranties shall be true and correct as of the date hereof and at all times thereafter until the C-PACE Financing is paid in full, each of which shall be true and binding on any future Property Owner.

Section 3.01. Organization and Authority. The Property Owner is duly organized, validly existing and in good standing in the state of its organization and with authority to do business under the laws of the State of Maine. The Property Owner has all necessary power and authority to own the Property and to conduct its business and enter into the transactions contemplated hereby. The Property Owner has the right to enter into and perform this Agreement, and the execution, delivery and performance of this Agreement and all other documents executed in connection therewith have been duly authorized, executed and delivered and constitute valid and binding obligations of the Property Owner, each enforceable in accordance with its respective terms.

Section 3.02. Title. The Property Owner has good and insurable title to the Property subject only to the permitted encumbrances approved by Capital Provider. The Property Owner shall cause any current mortgagee, as of the execution date of this Agreement, holding a mortgage lien against the Property as of such date, to consent to and subordinate the lien of such mortgage filed against the Property to the Assessment Lien by Mortgage Lender Consent which shall be recorded prior to recordation of notice of this Agreement. The Property Owner, through the Capital Provider, shall ensure that all financial institutions and lenders holding a lien, mortgage, or other collateral encumbrance on the Property receive notice and provide consent as required by the C-PACE Act.

Section 3.03. No Overdue Taxes or Payments. The Property is (i) current on real estate taxes, personal property taxes and municipal sewer, sanitary, and water district charges; (ii) has no outstanding and unsatisfied tax or municipal sewer, sanitary, or water district liens; (iii) is not subject to a mortgage or other lien on which there is a recorded notice of default, foreclosure, or delinquency that has not been cured; and (iv) there are no overdue payments on mortgages secured by the Property.

Section 3.04. No Misrepresentation or Material Nondisclosure. The Property Owner has not made and will not make to the Municipality, the Capital Provider, or the Trust, in this Agreement or otherwise, any untrue statement of a material fact, nor has it omitted and nor will it omit to state a material fact necessary to make any statement made not misleading.

Section 3.05. Commercial Purpose. The Property Owner will use the proceeds of the C-PACE Financing Advance only for the purposes specified in the Recitals to this Agreement in accordance with the C-PACE Act. The primary purpose of the C-PACE Financing is for a commercial and business purpose, and the proceeds of the C-PACE Financing will not be used primarily for personal, family, or household purposes.

ARTICLE IV - DEFAULT AND FORECLOSURE

Section 4.01. Delinquency, Collection and Foreclosure. If a C-PACE Assessment is delinquent or in default, collection and foreclosure shall proceed as set forth in Section 10205(5) of the C-PACE Act and the statutes referenced therein. The C-PACE Assessment Lien shall take precedence over all other liens or encumbrances as permitted by the C-PACE Act.

(a) The C-PACE Assessment levied pursuant to the C-PACE Act, and payment thereof (together with the interest, fees and any penalties thereon) shall constitute a C-PACE Assessment Lien against the Property until paid in full. Delinquencies shall be subject to the procedures outlined in Section 10205(5) of the C-PACE Act and the statutes referenced therein.

(b) If a C-PACE Assessment is delinquent or in default and the Property Owner is delinquent in any tax debt due to the Municipality, collection shall be instituted by the Municipality and may occur only by the recording of liens and by foreclosure under Title 36, M.R.S. sections 942 and 943. Liens must be recorded and released in the same manner as liens for real property taxes. If the Municipality acquires the Property through tax lien foreclosure or otherwise pursuant to 36 M.R.S. §§942 and 943, then the Municipality shall cause to be paid to the Capital Provider all delinquent amounts payable under the C-PACE Financing at the time of foreclosure (whether from the proceeds of sale or other amounts collected by the Municipality after satisfaction of delinquent taxes) but only to the extent that the Municipality has received such amounts through the foreclosure process and there are funds remaining after satisfaction of delinquent taxes, interest, fees and costs owed to the Municipality, and any unpaid C-PACE Financing installments shall continue as against the Property as an enforceable Assessment Lien with full rights of collection as set forth in the C-PACE Act. For the avoidance of doubt, it is agreed and understood by the Parties that in no event

shall the Municipality be obligated to make C-PACE Assessment payments during any period in which it is deemed the owner of the Property acquired through the statutory tax lien foreclosure process. It is agreed and understood that unpaid future C-PACE Assessment payments shall be the obligation of the person or entity that subsequently acquires title to the Property subject to the C-PACE Lien.

(c) If only a C-PACE Assessment is delinquent but the Property Owner is current on payment of all municipal taxes due to the Municipality, then the Municipality shall, and does hereby in such event, assign the C-PACE Assessment Lien to the Capital Provider, and the Capital Provider shall, and does hereby in such event, accept an assignment of the C-PACE Assessment Lien from the Municipality. If only a C-PACE Assessment is delinquent but the Property Owner is current on payment of all municipal taxes due to the Municipality, the Capital Provider then shall have and possess all the same powers and rights at law as the Municipality and its tax collector with regards to the priority of the C-PACE lien, the accrual of interest and fees, and the costs of collection. The Capital Provider shall have the same rights to enforce the C-PACE lien as any private party or lender holding a lien on real property and shall have all such other rights as set forth in the C-PACE Act, including the right of foreclosure consistent with Title 14, sections 6203-A and 6321 and any other action in contract or lawsuit for the enforcement of a C-PACE Lien. The Capital Provider, as assignee of the lien, shall recover costs and reasonable attorney's fees incurred as a result of any foreclosure action or other legal proceeding brought pursuant to this subsection, which may be collected by the Capital Provider at any time after it has made demand for payment.

ARTICLE V – MISCELLANEOUS

Section 5.01. Effectiveness of this Agreement. It is agreed and understood by the Parties that, without regard to the date of execution of this Agreement by any Party hereto, the effectiveness of this Agreement is expressly conditioned on the issuance by the Trust of a Notice of Approval for the Property Owner's C-PACE Program application for the subject Property and the closing of the C-PACE Financing transaction. Pursuant to Section 1.02 of this Agreement, the Parties agree that if the C-PACE Financing amount, interest rate, repayment schedule, maturity or other material terms of the C-PACE Financing are modified or amended by the Parties between the date of execution of this Agreement and the date of closing of the C-PACE Financing transaction, the Parties shall, as a condition of closing, execute and deliver an Amended and Restated Exhibit A in the form attached as Exhibit A-1 hereto, and Capital Provider shall provide the Trust with a final, fully-executed copy of this Agreement, with any amendments thereto, within 10 days after closing of the C-PACE Financing transaction.

Section 5.02 No Waiver. No waiver of any default or breach by the Property Owner hereunder shall be implied from any failure by any other Party to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver. Waivers of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

Section 5.03. Successors and Assigns. This Agreement is binding upon and made for the benefit of the Property Owner, the Capital Provider, the Municipality and the Trust, their successors and permitted assigns, and no other person or persons shall have any right of action hereunder.

Section 5.04. Notices. Any notice and other communications hereunder shall be in writing and shall be delivered in person or mailed by reputable overnight courier or by registered or certified mail, return receipt requested, postage prepaid, to the other Parties, at the address set forth at the caption of this Agreement. The addresses of any Party may be changed by notice to the other Party given in the same manner as provided above.

Section 5.05. Amendments. No amendment, modification, termination, or waiver of any provisions of this Agreement shall be effective unless in writing and signed by all of the Parties.

Section 5.06. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision. It is the intent of the parties hereto that the transactions contemplated herein shall comply with and achieve the intent of the C-PACE Act. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the court may modify this Agreement to give effect to the original intent of the parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 5.07. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maine.

Section 5.08. No Waiver of Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the Municipality or the Trust and their officials, employees, trustees, or agents, or any other person acting on behalf of the Municipality or the Trust and, in particular, governmental immunity afforded or available pursuant to Maine common law, the Maine Tort Claims Act, and the Constitutions of the State of Maine and United States.

Section 5.09. Third-Party Beneficiary. The Parties acknowledge that the Trust will rely on the terms of this Agreement and the representations and undertakings of the Parties contained herein and on the Property Owners' and Capital Provider's C-PACE Program application submittals. The Trust is deemed a third-party beneficiary of those provisions in this Agreement that grant or allow the Trust to exercise rights, receive documents and information in connection with the administration of the C-PACE Program, and are otherwise intended for the benefit of the Trust and its agents.

IN WITNESS WHEREOF, the Property Owner, the Municipality, and the Capital Provider have executed this Agreement as of the date first written above by and through their duly authorized representatives.

[MUNICIPALITY]

By _____
Name _____
Title _____

{CAPITAL PROVIDER}

By _____
Name _____
Title _____

NOTE: ALL OWNERS OF THE QUALIFYING

PROPERTY MUST AGREE AND EXECUTE; SEE
35-A MRS 10202(2)]
{ INSERT NAME OF PROPERTY OWNER(S) }

By _____
Name _____
Title _____

Exhibit A

Property Owner: _____

Property Location:

Street Address: _____

Municipality: _____

Tax Map and Lot No.: _____

Registry of Deeds Book and Page: _____

Capital Provider: _____

Capital Provider Address and Contact Information: _____

C-PACE Financing Amount: _____

Term of C-PACE Loan: _____

Interest Rate: _____

Payment Schedule

Exhibit A-1
Amended and Restated

(If Necessary: To be executed and delivered prior to closing if the C-PACE Financing amount, interest rate, repayment schedule, maturity or other material terms of the C-PACE Financing are modified or amended by the Parties between the date of execution of the C-PACE Assessment Agreement and the date of closing of the C-PACE Financing transaction)

Exhibit A to the C-PACE Assessment Agreement between the Parties identified below for the subject Property is hereby amended and restated as follows:

Property Owner: _____

Property Location:

Street Address: _____

Municipality: _____

Tax Map and Lot No.: _____

Registry of Deeds Book and Page: _____

Capital Provider: _____

Capital Provider Address and Contact Information: _____

C-PACE Financing Amount: _____

Term of C-PACE Loan: _____

Interest Rate: _____

Payment Schedule

Capital Provider certifies that with this amendment, the C-PACE Assessment Agreement and C-PACE Financing continue to comply with the minimum underwriting requirements of the C-PACE Act as of the date of closing.

When completed and executed by the Parties, this Amended and Restated Exhibit A shall be deemed incorporated in and made part of the C-PACE Assessment Agreement executed by the Parties for the subject Property.

Date: _____

[C-PACE CAPITAL PROVIDER/LENDER]:

By: _____

Name: _____

Its: _____

[PROPERTY OWNER]:

By: _____

Its: _____

[PROPERTY OWNER]:

By: _____

Its: _____

[MUNICIPALITY]

By: _____

Name: _____

Title: _____

Exhibit B

NOTICE OF C-PACE ASSESSMENT AGREEMENT

Notice is hereby given that the parties identified below have entered into a C-PACE Assessment Agreement (“Agreement”) relative to the Property identified below pursuant to the terms of Title 35-A M.R.S. §§10201 *et seq.*, “An Act to Allow for the Establishment of Commercial Property Assessed Clean Energy Programs” (the “C-PACE Act”) and that an assessment is made against the Property in the amount of the C-PACE Financing. The amounts financed under the Agreement are secured by a C-PACE assessment on the Property and, pursuant to 35-A M.R.S. §10205(2), the filing of this Notice creates a C-PACE lien against the Property subject to the C-PACE assessment until the amounts due under the Agreement are paid in full. Pursuant to 35-A M.R.S. §10205(2), notice is hereby given of the following:

DATE OF C-PACE AGREEMENT:

C-PACE FINANCING AMOUNT:

PROPERTY OWNER(S):

(Names and Addresses)

PROPERTY SUBJECT TO

C-PACE ASSESSMENT:

A certain property located in the City/Town of _____, County of _____, and State of Maine with a street address of:

Tax Map: _____, Lot No. _____

Registry of Deeds Book and Page: _____

(As more particularly described in **Exhibit A** hereto).

DURATION OF C-PACE AGREEMENT:

MUNICIPALITY:

C-PACE LENDER FILING NOTICE:

(Name and Address)

VERIFICATION OF MORTGAGE

LENDER CONSENT:

Verification is hereby made that any financial institution(s) holding a lien, mortgage, or security interest in or other collateral encumbrance on the property subject to the C-PACE assessment has provided consent to the Property Owner(s) and Municipality pursuant to 35-A M.R.S. §10205(4) that the borrower(s) may participate and enroll the subject property in the C-PACE Program. A copy of such consent(s) is/are attached as **Exhibit B** hereto.

Executed as a sealed instrument as of this ____ day of _____, 20__.

WITNESS:

[C-PACE CAPITAL PROVIDER/LENDER]:

By: _____

Name: _____

Its: _____

STATE OF _____

County of _____, SS

_____, 20__

Then personally appeared the above-named _____, in his/her capacity as _____ of _____ and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of said

_____.

Before me,

Notary Public/Maine Attorney-at-Law

Printed Name: _____

My Commission Expires: _____

[PROPERTY OWNER]:

By: _____

Its: _____

STATE OF _____

County of _____, SS _____, 20__

Then personally appeared the above-named _____, in his/her capacity as _____ of _____ and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of said _____.

Before me,

Notary Public/Maine Attorney-at-Law

Printed Name: _____

My Commission Expires: _____

[PROPERTY OWNER]:

By: _____

Its: _____

STATE OF _____

County of _____, SS _____, 20__

Then personally appeared the above-named _____, in his/her capacity as _____ of _____ and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of said _____.

Before me,

Notary Public/Maine Attorney-at-Law

Printed Name: _____

My Commission Expires: _____

[MUNICIPALITY]

By _____
Name _____
Title _____

STATE OF _____
County of _____, SS _____, 20__

Then personally appeared the above-named _____, in his/her capacity as
_____ of _____ and acknowledged the foregoing instrument to be his/her
free act and deed in his/her said capacity and the free act and deed of said
_____.

Before me,

Notary Public/Maine Attorney-at-Law
Printed Name: _____
My Commission Expires: _____

EXHIBIT A to NOTICE OF C-PACE AGREEMENT

(Description of Premises)

EXHIBIT B to NOTICE OF C-PACE AGREEMENT

(Copy of Executed Mortgage Lender Consent)



Efficiency Maine C-PACE Program Municipality Participation Guide

C-PACE Program Benefits

Why a Municipality Should Consider Participating

- Commercial PACE (C-PACE) means commercial property assessed clean energy. C-PACE is an economic development tool for municipalities. Energy-efficient buildings create a more competitive environment for retaining and attracting new businesses by lowering energy costs. Energy upgrades also create jobs and reduce greenhouse gases and other pollutants.
- *Many owners lack capital to implement energy improvements.* C-PACE provides up to 100% up-front, long-term financing to commercial property owners for Energy Savings Improvements. The costs of energy audits, construction, commissioning and post-construction performance measurement and verification (M&V) can be wrapped into C-PACE financing.
- C-PACE stimulates the implementation of energy savings improvements with 100% private market capital and requires no investment from the Municipality.
- *Owners often want to sell the building before an energy upgrade loan is repaid.* The C-PACE assessment obligation is attached to the property and can transfer to the new owner. Payments do not accelerate in case of sale or default.
- The C-PACE program requires that the estimated cost savings from Energy Savings Improvements equal or exceed the up-front investment and financing costs, leading the expected cash flow to be positive over the useful life of the improvements.
- As a property tax assessment, where permissible under lease agreements, C-PACE payments – together with the energy cost savings associated with the improvements – may be passed along to tenants.
- C-PACE has created a secured, clean energy financing product for Capital Providers. The security comes from the C-PACE Lien on a property. The lien, like property tax assessments, sits in a senior position to other encumbrances on the property, including mortgage debt and liens (other than Municipal Liens). The security provided by the tax assessment results in several compelling features, including longer-term financing and transferability of the repayment obligations to subsequent owners of the property.
- C-PACE financing strengthens the business case for investment in longer payback and deeper building retrofits beyond what may be possible with traditional financing.

Municipality Participation

Municipality Options for Participation

Maine Municipalities have two options for participation in the C-PACE Program.

A Municipality can:

- (1) Establish its own C-PACE program and administer the functions of the C-PACE Program itself; or,
- (2) Participate in the Efficiency Maine Trust C-PACE Program and enter into a contract with the Trust to administer certain functions of the C-PACE Program for the Municipality.

In option 1, Municipalities would have more control over the program design within their municipality, but they would be subject to significantly greater administrative burden, including developing and implementing their own program guidelines, recruiting and registering Capital Providers, accepting project applications and reviewing and approving projects for adherence to the rules and regulations. Municipality-based programs are typically less successful in large part to the unwillingness of Capital Providers to participate in smaller market size C-PACE programs.

In option 2, Municipalities are relieved of the majority of administrative burdens while still able to stimulate the adoption of energy savings improvements for commercial properties within their communities.

Under both options 1 and 2, Municipalities wishing to participate in the C-PACE Program must adopt a C-PACE Ordinance as required by the Maine C-PACE Act. The Trust has developed a model C-PACE Ordinance. A municipality that wishes to exercise option 2 must also enter into a C-PACE Municipality Participation Agreement with the Trust that establishes the Trust as the Municipality's C-PACE Program Administrator for certain designated functions. A Maine municipality that adopts a C-PACE Ordinance not materially different from the Trust's model C-PACE Ordinance and executes a C-PACE Municipality Participation Agreement with the Trust is a "Participating Municipality." A commercial property must be located in a Participating Municipality in order to be eligible for C-PACE financing through the Efficiency Maine C-PACE Program.

Municipalities interested in becoming a Participating Municipality under the Efficiency Maine Trust C-PACE program should closely review the following documents from the **C-PACE Program Guidelines** (available at Efficiencymaine.com/C-PACE):

- **Appendix B: Model C-PACE Ordinance**
- **Appendix C: C-PACE Municipality Participation Agreement**
- **Appendix D: C-PACE Assessment Agreement**

Participating Municipality Responsibilities

Responsibilities of the Municipality within the Efficiency Maine Trust C-PACE Program

The responsibilities below represent option 2 above. Option 1 would contain significantly greater municipality responsibilities. The below identified responsibilities have been simplified for understanding and further detail can be found in the aforementioned documents.

1. **Project Agreements:** The municipality must execute a C-PACE Assessment Agreement, along with the Property Owner and its Capital Provider, for each C-PACE project within their municipality. The C-PACE Assessment Agreement authorizes the creation of a C-PACE Lien on the Property receiving the Energy Savings Improvements. The process of completing this program responsibility is as follows:
 - During the development of a C-PACE Project, the Capital Provider and Property Owner will sign the C-PACE Assessment Agreement.
 - The Municipality will then sign the C-PACE Assessment Agreement, approved as to form and substance by the Municipality.
 - All parties must sign the C-PACE Assessment Agreement prior to the submission of a C-PACE project application to Efficiency Maine, though the effectiveness of the Agreement is conditioned on final project approval by Efficiency Maine and closing of the C-PACE loan.
 - Once a project approval is provided by Efficiency Maine and the C-PACE financing transactions closes, a notice of the C-PACE Agreement will be filed in the registry of deeds, which filing will create a lien on the Property implementing the Energy Savings Improvements until the amounts due under the C-PACE Financing are paid in full. The form C-PACE Assessment Agreement places the obligation for recording the Notice of C-PACE Agreement on the Capital Provider.
2. **Annual C-PACE Assessments and Collections:** The municipality will not need to finance or fund any C-PACE projects and will incur no liability for payment of the loan. The C-PACE Assessment Agreement details the responsibilities of the Municipality and Capital Provider with regard to billing and collection of the C-PACE assessments, but in summary: The Capital Provider will provide the Municipality with a "Payment Due Notice" specifying the amount due from the Property Owner in repayment of the C-PACE loan for the subject year. The Municipality will assess the Property in the amount specified in the Payment Due Notice and designate the Capital Provider as agent for the billing of the C-PACE assessment amount and the collection of payments from the Property Owner. The C-PACE assessment payments are to be applied by the Capital Provider to the C-PACE loan balance. The Capital Provider will provide periodic reports to the Municipality on the status of the C-PACE payments from each Property Owner and will provide notice to the Municipality of any delinquency or default of a C-PACE assessment payment.

The Capital Provider shall provide notice to the Municipality and the Property Owner when the C-PACE Financing amount has been paid in full and shall cooperate with the Municipality and the Property Owner in the preparation and recording of a release and discharge of the C-PACE Lien on the subject Property when the C-PACE Financing has been satisfied.

3. **Default and Foreclosure:** The process for collection of delinquent C-PACE assessments is governed by the Maine C-PACE Act. If a C-PACE Assessment is delinquent or in default, collection and foreclosure shall proceed as follows:
- If both the C-PACE Assessment is delinquent or in default **AND** the borrower or property owner is delinquent in any tax debt due to the Municipality, the process is as follows:
 1. Collection may occur only by the recording of liens and by foreclosure under 36 M.R.S. §§ 942 and 943. The Municipality would institute the foreclosure process for both the delinquent tax and C-PACE assessments, and liens must be recorded and released in the same manner as liens for real property taxes.
 2. If the Municipality acquires the Property through tax lien foreclosure, then the Municipality shall cause to be paid to the Capital Provider all delinquent amounts payable under the C-PACE Financing at the time of foreclosure. *(This is true only to the extent that the Municipality has received such amounts through the foreclosure process and there are funds remaining after satisfaction of delinquent taxes, interest, fees, and costs owed to the Municipality.)*
 3. The portion of the C-PACE assessment that has not yet become due at the time foreclosure is not eliminated by foreclosure and remains as a lien against the Property with full rights of collection as set forth in the C-PACE Act.
 4. The form C-PACE Assessment Agreement provides that in no event shall the Municipality be obligated to make C-PACE Assessment payments during any period in which it is deemed the owner of the Property acquired through the statutory tax lien foreclosure process.
 5. Unpaid future C-PACE Assessment payments shall be the obligation of the person or entity that subsequently acquires title to the Property subject to the C-PACE Lien.
 - If **only** the C-PACE Assessment is delinquent, but the borrower or property owner is current on payment of all municipal taxes due to the Municipality, the process is as follows:
 1. The Capital Provider will take an assignment of the C-PACE Lien, as provided in the C-PACE Assessment Agreement.
 2. Per the C-PACE Act, the Capital Provider then shall have and possess all the same powers and rights at law as the Municipality and its tax collector with regards to the priority of the C-PACE lien, the accrual of interest and fees, and the costs of collection.
 3. The Capital Provider shall have the same rights to enforce the C-PACE lien as any private party or lender holding a lien on real property and shall have all such other rights as set forth in the C-PACE Act, including the right of foreclosure consistent with Title 14, sections 6203-A and 6321 and any other action in contract or lawsuit for the enforcement of a C-PACE Lien.

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – APRIL 3, 2024
HYBRID REGULAR MEETING – 7:00 P.M.

Order No. 24-037. First reading and schedule a second reading, to approve the expenditure, in an amount not to exceed, \$350,000 from the Land Acquisition Reserve Fund for the purpose of purchasing a portion of property located at 162 Spurwink Road, identified by the Scarborough Tax Assessors Map R098/Lot 18, as recommended by the Parks and Conservation Land Board, and authorize the Town Manager, to execute any and all documents as are necessary to protect the Town’s interest. *[Parks and Conservation Land Board]*

Parks and Conservation Land Board

Ought to Pass

Sponsor

Recommendation

04/03/2024 – Vote:

First Reading/Vote

N/A

Public Hearing

04/17/2024

Second Reading/Final Approval/Vote

Scarborough Town Council Meeting

Council Meeting Date: April 3, 2024

ACTION ITEM: Order No. 24-037.

SUBJECT:

First reading and schedule a second reading, to approve the expenditure, in an amount not to exceed, \$350,000 from the Land Acquisition Reserve Fund for the purpose of purchasing a portion of property located at 162 Spurwink Road, identified by the Scarborough Tax Assessors Map R098/Lot 18, as recommended by the Parks and Conservation Land Board, and authorize the Town Manager, to execute any and all documents as are necessary to protect the Town's interest. *[Parks and Conservation Land Board]*

PURPOSE:

To assist in the preservation of land for open space within the Town of Scarborough for public benefit.

BACKGROUND:

The Scarborough Land Trust is a non-profit community-based organization and conserve land where natural resources, scenic vistas and historical significance offer unique value to the community.

In November of 2019, the voters approved an additional \$2.5 million for land conservation and historic preservation. The Parks and Conservation Land Board was created to evaluate properties for conservation and recommend to the Town Council on the use of land bond monies for the purpose of acquisition and stewardship of conserved land.

An application for the subject property was reviewed by the Parks and Conservation Land Board, who have provided a positive recommendation for purchase. A grant application to the North American Wetlands Conservation Act (NAWCA) for \$350,000 in funding has been submitted with expected grant award in June 2024 and release of funds by April 2025. The Parties wish to finalize the sale in June 2024, so the request is to use Land Bonds to accomplish the purchase with the clear understanding and expectations that any grant funds received will reimburse the Land Bond account.

FISCAL IMPACT:

\$2,500,000 Voter Approved Land Bond (TC Order #19-060)
(\$ 396,099) Alger Hall Building (649 US Rt 1) TC Order #21-052
(\$ 200,000) Libby Property (196 Gorham Rd) TC Order #21-088
(\$ 140,000) 91 Burnham Road TC Order #22-113
(\$ 260,000) 80 Beech Ridge Road TC Order #23-053
(\$ 130,000) Gorham Road [located at the end of Finch Way] TC Order #23-083
(\$ 210,000) 50 Hanson Road (R001/Lot 007), TC Order #23-132
\$1,163,901 Unspent Land Bond Funds
(\$210,000) 380 Payne Road, approved per TC Order #22-066 – did not close

STATUS / PROCESS TO DATE:

- Letter of Recommendation from the Parks & Conservation Land Board: March 26, 2024
- First Reading before the Town Council: April 13 2024

PROPOSED ACTION:

Recommend approval of the first reading on Order No. 24-037 and schedule the second reading for Wednesday, April 17 2024.

ATTACHMENTS:

- Letter of Recommendation from the Parks and Conservation Land Board.
- Application Packet from the Scarborough Land Trust.

PARKS AND CONSERVATION LAND BOARD

Town of Scarborough, Maine



March 26, 2024

Nick McGee, Town Council Chair
Honorable Town Councilors and Town Manager
Town of Scarborough, Maine

Dear Chairman McGee and Friends,

Board Members

Suzanne Foley-Ferguson
Rachel Hendrickson
Richard Murphy
Noah Perlut
Jessica Sargent
Douglas Williams

Staff Liaison
Todd Souza

Council Liaison
Karin Shupe

The Parks and Conservation Land Board met on March 21, 2024, and voted to recommend that the Town Council authorize \$350,000 be spent from already approved Land Bonds to assist the Scarborough Land Trust (SLT) in purchasing 22.8 acres located at 162 Spurwink Road (Expanding Pleasant Hill Preserve).

This property will connect to and expand the existing 161-acre Pleasant Hill Preserve and connect +/-300 contiguous acres of Rachel Carson National Wildlife Refuge (Appendix IV - Map). In all, the 22.8 additional acres will connect to about 500 acres of contiguous conserved lands. Large land blocks support the Town's goals of increasing access to land for recreation in the form of trails and connections, as well as protecting habitats for the greatest number of species.

In addition to connectivity, the property itself provides important wildlife habitat. As SLT described in the application (Appendix II - Application), it is located within four Federal priority areas and three Atlantic Coast Joint Venture bird conservation Focus Areas. It is also located within a Maine Department of Inland Fisheries and Wildlife (MDIFW) Focus Area of statewide ecological significance. It contains 9 acres within a MDIFW identified "state listed animal habitat" for endangered, threatened, and species of concern, and their habitat buffers. Nature's Network, a 13 state collaborative effort to identify and conserve connecting intact ecosystems that support imperiled species, has identified approximately 7 acres as Core Habitat.

SLT will create recreational opportunities for hiking, skiing, snowshoeing, wildlife observation, and hunting.

The PCLB reviewed the property in one meeting. The property evaluation score as compared to similarly sized parcels is below:

00 Gorham Road	11.5 acres	236 points
50 Hanson Road	18 acres	252 points
162 Spurwink Road	22.8 acres	397.2 points
Libby I/Nonesuch	16.57 acres	543 points

The total project cost is \$549,147, so the Town's contribution to the project will be 64 percent of the project (Appendix III - Budget) with one very valuable caveat, there is the potential for reimbursement to the Town of up to the full amount. The SLT applied for a \$350,000 North American Wetlands Conservation Act (NAWCA) grant in December 2023. As detailed in the SLT cover letter (Appendix I - Letter) the expected award date is July 2024 and funds are anticipated to be released April of 2025. If SLT is awarded funding from the NAWCA grant, SLT would repay the Land Bond fund up to \$350,000, depending on the amount and costs awarded by the grant. If SLT is not awarded the grant, no repayment would occur. The landowners are also graciously providing a \$120,000 donation in the form of a bargain sale. A community effort led by SLT will fundraise the remaining portion of the project.

This project is superb for all of the aforementioned reasons, and the photos attached provide a glimpse of what will be protected (Appendix V - Photos).

The Board recommends the purchase and that the development rights on the property be extinguished legally by attaching conditions to the contribution and/or placing a conservation easement on the property. These details are typically negotiated between town and land trust staff and other contributing organizations, and should be included in the Council's direction to the manager.

If you have any questions regarding this property, a representative will be available at your meeting. Scarborough continues to be a leader in conservation, and I am proud to help in that regard. I hope you will be as well.

Sincerely,

Jessica Sargent
Chair, Scarborough Parks and Conservation Land Board

Attachments:

Appendix I - Letter

Appendix II - Application to the PCLB

Appendix III - Project Budget

Appendix IV – Map of Parcel and Protected Adjacent Land

Appendix V - Photos



March 12, 2024

Jessica Sargeant
Chair
Parks and Conservation Land Board
Town of Scarborough
Scarborough, ME 04074

Dear Jessica,

The Scarborough Land Trust (SLT) is applying for Land Bond funding for the purchase of a portion of 162 Spurwink Rd -Lot R098-018 owned by Jim and Louise Falt. SLT has executed a purchase and sale agreement for a purchase price of \$350,000 and are looking to close by end of June 2024. SLT is requesting Land Bond funding of \$350,000.

SLT is also applying to the North American Wetlands Conservation Act (NAWCA) grant for \$350,000 in funding to purchase the same property. The NAWCA grant does allow reimbursement for certain project costs as well. The NAWCA grant application was submitted in December 2023 with an expected award date of July 2024. Funds are anticipated to be released by April of 2025. The grant request is part of a larger grant application submitted in coordination with the Maine Coast Heritage Trust and other land trusts from around the state of Maine.

SLT is requesting Land Bond funding to purchase the property by end of June 2024. If SLT is awarded funding from the NAWCA grant, then SLT would repay the Land Bond fund up to \$350,000 (depending upon the amount and costs awarded by the NAWCA grant). If SLT is not awarded the grant, then no repayment would occur. We consider this a win-win for the residents of Scarborough, as it secures the property for conservation while providing the opportunity to use Federal funding and preserve Town funding for other conservation projects.

Thank you for your time and consideration in reviewing our application. Please feel free to reach out with any questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read "SKUNKLER".

Scott Kunkler
Conservation Director

Town of Scarborough, Maine

LAND ACQUISITION APPLICATION FORM

Property Name: Expanding Pleasant Hill Preserve Date: 3-10-24

Applicant Name: Scarborough Land Trust

GENERAL INFORMATION:

Property Address: 162 Spurwink Rd

Scarborough, Maine 04074

Mailing Address: PO Box 1237

Scarborough, ME 04074

Contact Person: Scott Kunkler

Phone # 207-289-1199 e-mail: skunkler@scarboroughlandtrust.org

Landowner(s) -please list full name of all owners (and lien holders, if any)

Jim and Louise Falt

Deed type: Warranty Deed Book / page# 4677 / 106

Current Assessed Value \$423,400

Recent appraised value (if available) \$470,000 for back 25 acres

Existing boundary survey? ☒ Y / ☐ N (circle) Will be updated to split the property.

Potential boundary disputes? Y / ☒ N (circle) (if yes, attach explanation)

Any hazardous waste on the property? Y / ☒ N An environmental assessment will be completed.

LAND DESCRIPTION: Tax Map # R098 Lot # 018 Zoning District RF and RP

Total Acres: 39.5 Proposed purchase acres: 25 Proposed easement acres

Are there any buildings on the property? (Please circle) yes / ☒ no

If yes, are they a part of the proposed purchase? Y / N

BRIEF PROJECT DESCRIPTION:

(Please provide information regarding the suitability for public acquisition, special features, and proximity to existing public lands; include the value to the people of Scarborough and any current or potential uses)

SLT will purchase ~25 acres of forested land split from a ~40-acre parcel. The property includes 6 acres of NWI forested (PFO) and shrub (PSS) wetlands, and 19 acres of mature forested uplands of towering mature pine, spruce, maple, and oak trees. The wetlands form part of a larger 53-acre wetland complex that forms the headwaters of the Spurwink River, which flows into the Spurwink Marsh, a saltwater marsh. The property connects to 300 contiguous acres of Rachel Carson NWR. It also connects to SLT's 161-acre Pleasant Hill Preserve (PHP) and will expand PHP to 186 acres. In all the property will connect to about 500 acres of contiguous conserved lands. It is located within 4 Federal priority areas and 3 Atlantic Coast Joint Venture bird conservation focus areas. It is also located within a Maine Department of Inland Fisheries and Wildlife (MDIFW) Focus Area of statewide ecological significance. It contains 9 acres within a MDIFW identified "state listed animal habitat" for "endangered, threatened, and special concerns species occurrences and habitat buffers." Nature's Network identifies approximately 7 acres as Core Habitat for Imperiled Species (areas likely to support high levels of imperiled terrestrial and aquatic species, including 600 Species of Greatest Conservation Need).

SLT will create recreational opportunities for hiking, skiing, snowshoeing, wildlife observation, and hunting. SLT will also provide educational programs for people of all ages that bring awareness of the property's connections to the Spurwink Marsh, teach the values of forests and wetlands, as well as understand the property's role in mitigating the impacts of climate change in a meaningful local setting.

Do you (the presenter) believe that there will be a willing seller(s) of this site?
Please explain: We have an executed P and S Agreement with the seller.

Please attach the following:

- Site Location Map (map provided)
- Assessors Map (with abutting properties)
- Photo(s) (no more than 1 page please)

Directions to the property from Town Hall:

_ North on US Route 1 to right on Black Point Rd to left on Spurwink Rd. Property on left.

LEAVE THIS BOX BLANK UNTIL FURTHER NOTICE

Important Note: The Town Council of the Town of Scarborough requires that all owners of land being proposed for town purchase are willing sellers and have full knowledge that their property is being presented to them for consideration. When and if the Parks and Conservation Land Board recommend a purchase, the owners of the property will be asked to sign below to indicate their willingness to sell. *A signed letter stating the above is also acceptable.*

Owner #1

date

Owner #2

date

Site Description (To be filled out by Applicant or Representative)

Directions: Please check all that apply to the parcel that is proposed for purchase. If unsure, leave blank.

- ☒ Rare, or endangered species
- ☐ Freshwater rivers, streams, vernal pools
- ☐ Ocean, tidal or estuary
- ☐ Working Farm or Forest
- ☒ Saltmarsh / other wetlands

- ☐ Creates link between public or protected parcels or trails
- ☐ Provides buffer for river, streams or brooks

- ☐ Public access to beaches, marshes, waterways, or other natural areas
- ☒ Public access to trails or other public lands

- ☐ Existing active recreation (ball fields, motorized vehicles, etc.)
- ☐ Potential active recreation
- ☐ Existing passive recreation (birding, hiking, horseback riding, skiing, etc.)
- ☒ Potential passive recreation

- ☐ Scenic views
- ☐ Historical significance (cemetery, monument, archeological site)

- Possibilities for
- ☒ Purchase
- ☐ Easement
- ☐ Donation

Note: This is a quick summary of the Detailed Assessment Form that the committee will be using to evaluate your parcel. The detailed form is available upon request and is based on a point system. The full evaluation has subjective components, as well.

V Site Visit Scheduled: (to be filled out by committee) _____

Expanding Pleasant Hill Preserve

162 Spurwink Rd

Scarborough Land Trust

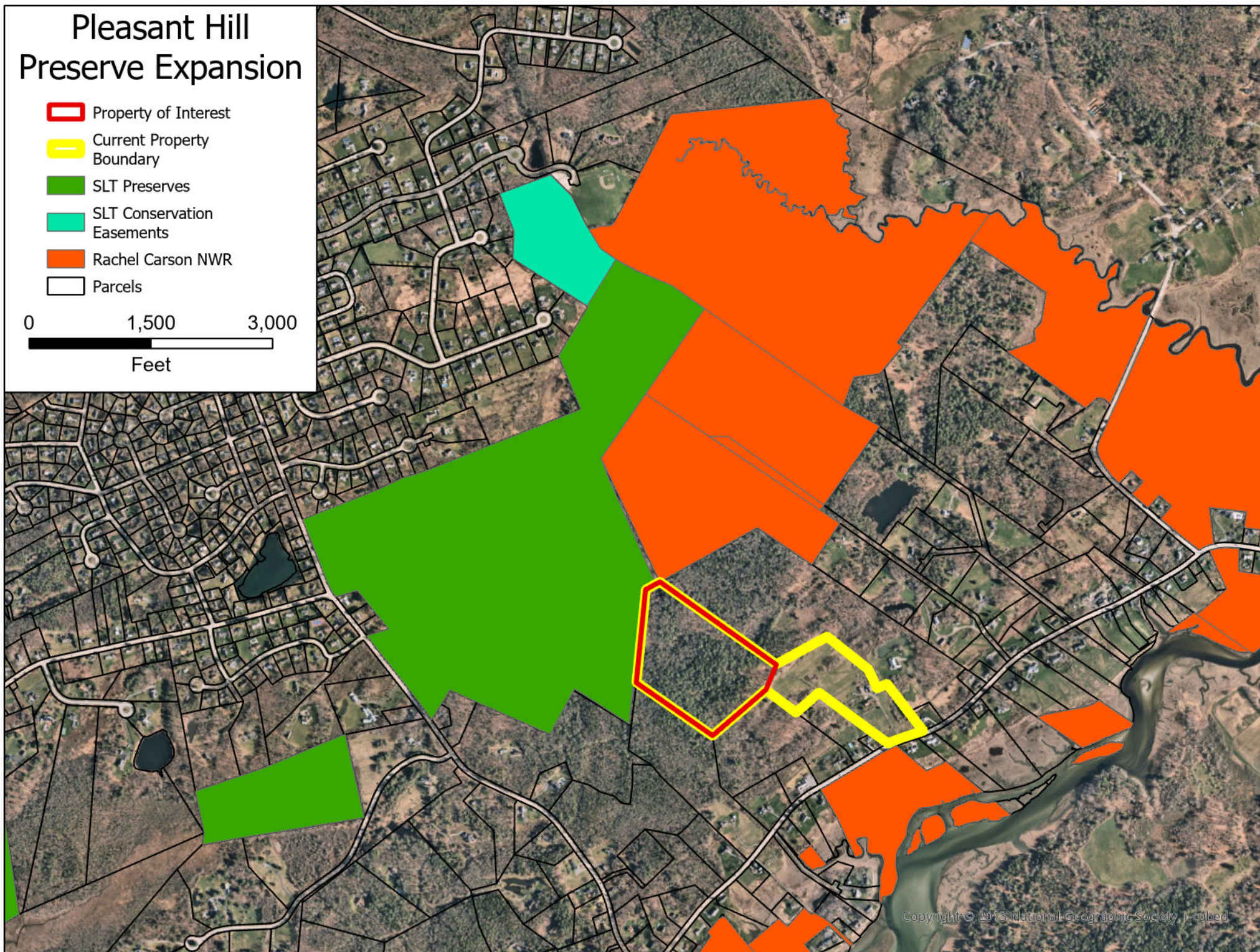
<i>Expense</i>	<i>Estimate</i>	<i>Actual</i>
Appraised value of property		\$470,000
Appraisal	\$5,800	\$1,200
Environmental Review	\$2,200	
Survey	\$5,000	
Legal Fees	\$5,000	
Closing costs including title policy	\$2,500	
Long-term Stewardship		\$34,500
Land Protection Staff Costs	\$12,480	
Overhead and Administration	\$10,467	
Total		\$549,147

<i>Income</i>	<i>Landowner donation</i>	<i>SLT Fundraising</i>	<i>Town of Scarborough Land Bond</i>	<i>Total</i>
Purchase price of property	\$0	\$0	\$350,000	\$350,000
Bargain Sale	\$120,000	\$0	\$0	\$120,000
Appraisal	\$0	\$7,000	\$0	\$7,000
Environmental Review	\$0	\$2,200	\$0	\$2,200
Survey	\$0	\$5,000	\$0	\$5,000
Legal Fees	\$0	\$5,000	\$0	\$5,000
Closing costs including title policy	\$0	\$2,500	\$0	\$2,500
Long-term Stewardship	\$0	\$34,500	\$0	\$34,500
Land Protection Staff Costs	\$0	\$12,480	\$0	\$12,480
Overhead and Administration	\$0	\$10,467	\$0	\$10,467
	\$120,000	\$79,147	\$350,000	\$549,147

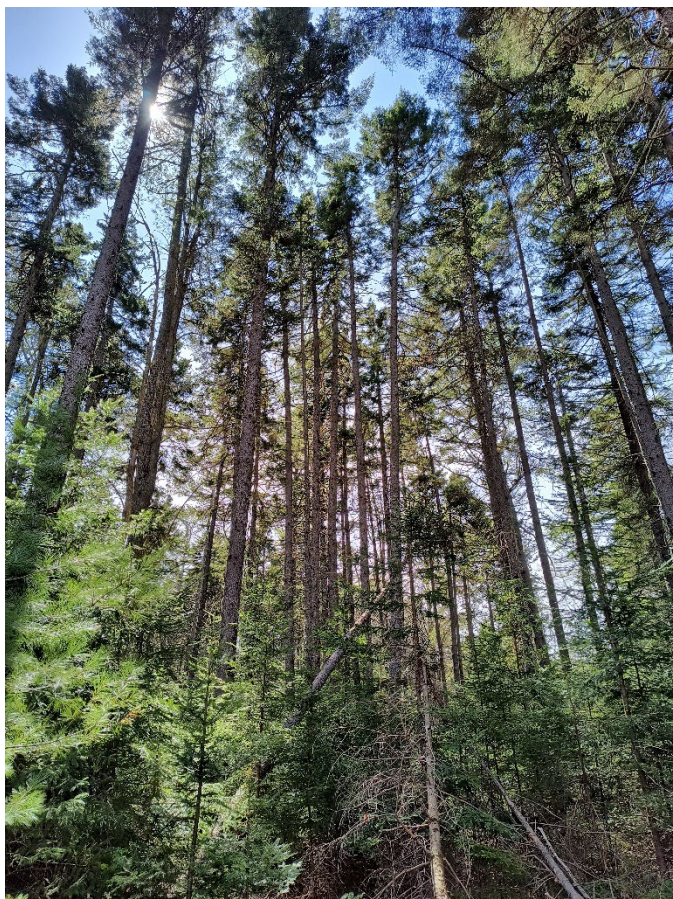
Pleasant Hill Preserve Expansion

-  Property of Interest
-  Current Property Boundary
-  SLT Preserves
-  SLT Conservation Easements
-  Rachel Carson NWR
-  Parcels

0 1,500 3,000
Feet



Expanding Pleasant Hill Preserve





AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – APRIL 3, 2024
HYBRID REGULAR MEETING – 7:00 P.M.

Order No. 24-038. Move approval on the request to move approval on names posted to the various committees/boards, by the Appointments and Negotiations Committee at the March 20, 2024, Town Council meeting. *[Appointments and Negotiations Committee]*

Appointments/Negotiations Committee

Ought to Pass

Sponsor

Recommendation

04/03/2024 – Vote:

First Reading/Vote

N/A

Public Hearing

N/A

Second Reading/Final Approval/Vote

Scarborough Town Council Meeting

Council Meeting Date: April 3, 2024

ACTION ITEM: Order No. 24-038.

SUBJECT:

Act on the request to move approval on names posted to the various committees/boards, by the Appointments and Negotiations Committee at the March 20, 2024, Town Council meeting.
[Appointments and Negotiations Committee]

PURPOSE:

To fill vacancies on the various Town committees/boards.

BACKGROUND:

These assignments are completed on an annual basis or when an application is received and there is a vacancy on the Committee/Board.

FISCAL IMPACT:

N/A

STATUS / PROCESS TO DATE:

- Recommendations from Appointment/Negotiations Committee: March 13, 2024
- Names posted at Town Council meeting: March 20, 2024
- Single action before Town Council: April 3, 2024

PROPOSED ACTION:

Move approval on Order No. 24-038, as recommended.

ATTACHMENTS:

- Recommendations from the Appointments/Negotiations Committee.

Appointments and Negotiations Committee –March 2024 Appointments

Coastal Waters and Harbor Advisory Committee:

Move Robert Odlin from 2nd alternate to 1st alternate with a term to expire 2026 and appoint Tyler Davis as 2nd alternate with a term to expire 2025.

Long Range Planning Committee:

Reappoint Peter Freilinger as a full voting member with a term to expire 2026, move Portia Hirshman from 1st alternate to a full voting member with a term to expire 2024, move Robert Odlin from 2nd alternate to 1st alternate with a term to expire 2024, and to appointment Judith Fischer as 2nd alternate with a term to expire 2026.

Parks and Conservation Land Board:

Appointment Maggie Vishneau as a full voting member with a term to expire 2026.

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – APRIL 3, 2024
HYBRID REGULAR MEETING – 7:00 P.M.

Order No. 24-039. Move approval on the request to authorize the Town Manager to pursue the sale of Alger Hall to the Historical Society. *[Town Manager]*

Town Manager

Ought to Pass

Sponsor

Recommendation

04/03/2024 – Vote:

First Reading/Vote

N/A

Public Hearing

N/A

Second Reading/Final Approval/Vote

Scarborough Town Council Meeting

Council Meeting Date: April 3, 2024

ACTION ITEM: Ordinance No. 24-039.**SUBJECT:**

Act on the request to authorize the Town Manager to pursue the sale of Alger Hall to the Scarborough Historical Society. *[Town Manager]*

PURPOSE:

To authorize the Town Manager to pursue the sale of Alger Hall to the Scarborough Historical Society, pursuant to the process prescribed in the Real Estate Disposition Policy.

BACKGROUND:

When the opportunity presented itself, the Town purchased the property in 2021 for the purpose of preserving an important part of Scarborough's history and securing our interests in the Dunstan Fire Station. In the ensuing years, we have made investments to secure the structure and have been considering options for Alger Hall, first dismissing any municipal use and then focusing attention on leasing the building to the Scarborough Land Trust. The Scarborough Historical has emerged as an interested party and has expressed interest in acquiring the property, since they have outgrown their existing building next door.

The notion of selling the building to the Historical Society, meets the Town's original objectives of preserving history. This request is to pursue to sale to the Historical Society in accordance to the Real Estate Disposition Policy. To ensure the Town's needs to support the operations at the Dunstan Fire Station are secured, it is expected that an easement or other use rights would be secured as a part of this transfer of ownership and that a Right of First Refusal would be included.

FISCAL IMPACT:

Sale Price to be determined, with the recommendation that proceeds be returned to the Land Bond Fund for future use.

STATUS / PROCESS TO DATE:

- Authorization from Town Council: April 3, 2024

PROPOSED ACTION:

Recommend approval on the request to authorize the Town Manager to pursue the sale of Alger Hall to the Historical Society.

ATTACHMENTS:

- Letter of Interest from the Scarborough Historical Society
- Letter of Interest from the Scarborough Historical Society to purchase Alger Hall
- Real Estate Disposition Policy

Received 1/25/24
TMH



January 19, 2024

Thomas Hall
Scarborough Town Manager
P.O. Box 360
Scarborough, ME 04070

Scarborough Historical Society
and Museum
Est. 1961

Dear Town Manager Hall:

The Scarborough Historical Society & Museum is aware that Alger Hall, a town owned property adjacent to the Society's building, will be available for lease. The society views Alger Hall as an ideal companion building and a solution to many of its serious challenges.

From September through June, Scarborough Historical Society offers presentations to the public on some aspect of local history. Due to lack of adequate space in our building, these programs are offered at the Scarborough Public Library in a meeting room which per fire regulations is limited to 50 people. Reservations must be made in advance, and often many people are turned away. In Alger Hall's largest room, where meetings and Grange suppers have been held in the past, the society would at last have a place to present its programs.

Since its founding in 1961, the historical society has been a repository for artifacts and documents that relate to the history of Scarborough and its people. Our collections are bulging at the seams, and more space is desperately needed. Alger Hall would provide convenient close-by storage areas and office space needed in the administration of our collections. Leasing Alger Hall would also allow expansion of exhibits and display areas, enabling adults and school children to view our many items that tell the story of Scarborough's past. We have a large number of historical items we'd like to display, but lack of space prohibits that.

Alger Hall was originally built as a meeting hall for the Independent Order of Good Templars in the 19th century at the location where the soldiers' monument is situated. With few meeting places available at that time, classes for terms of the original Scarborough Free High School were held at the Good Templars' Hall, along with various other community programs. In 1913, after various groups in Scarborough raised funds to erect a monument to honor Scarborough soldiers, the Good Templar's Hall was moved to its current location. It became the home of the Dunstan Grange, and its name was changed to Alger Hall in remembrance of two Alger brothers, early settlers in the town. The building eventually became the home of the Governor William King Lodge of the Masons, who later sold it to the Town of Scarborough.

Because of Alger Hall's ideal location and its historical past, the Scarborough Historical Society & Museum is uniquely positioned to better serve the town's residents if we can lease the property. We have resources available to make needed improvements while respecting the building's heritage and as much as possible maintaining its original features. We will be able to support both buildings indefinitely. We are a perfect match.

Representatives from the Scarborough Historical Society will be happy to meet with you at a mutually convenient time to discuss this matter.

647 U.S. Route One, Scarborough, Maine
www.scarboroughhistoricalsociety.org • scarboroughhist@gmail.com • (207) 885-9997
Mailing Address: P.O. Box 156, Scarborough, ME 04070-0156

Sincerely yours,



Rodney Laughton, President
Scarborough Historical Society

Scarborough Historical Society Board of Directors:

Rodney Laughton, President
Bruce Larrabee, Vice President
Karlene Osborne, Secretary
Joyce Alden, Treasurer
Don Taylor, Historian
Mary Pickard, Newsletter
Sarah Jane Matteau, Sunshine Committee
Linda Snow McLoon, Publicity/Outreach
Sandra Abbott
Janice Makowski
Stephen Spaulding, MD



Alger Hall at 649 U.S. Rte. 1 & the Scarborough Historical Society at 647 U.S. Rte. 1

Alger Hall Plot Plan



Alger Hall when first moved to 649 U.S. Rte. 1 in 1913

Scarborough Free High School students in front of Good Templars' Hall in 1891, prior to its being named Alger Hall when moved to become the Dunstan Grange Hall.





Scarborough Historical Society
and Museum
Est. 1961

February 19, 2024

Dear Tom Hall and Members of the Town Council,

Our Board of Directors would like the Council to know of our sincere desire to lease Alger Hall. We are in a financial position to make any necessary repairs and improvements over the length of the lease. We also would consider purchasing the property from the town with a written provision that we would give the Town of Scarborough the right of first refusal in the event we decided to sell it.

Alger Hall is a historic structure, and we would like to preserve its character and restore original features wherever possible. Given Alger Hall's location next to our museum, it would be an ideal fit for us.

We would be happy to answer any questions and open our museum, at your convenience, so that you can see our current overcrowded situation. Thank you for your consideration.

Sincerely,

Rodney Laughton

Rodney Laughton
President

**Town of Scarborough
Real Estate Disposition Policy
Adopted November 17, 2010**

I. Introduction

This Policy describes the process for the Town of Scarborough (the “Town”) to utilize when making decisions for the disposition of real estate by the Town other than those acquired by tax foreclosure in which case the Policy for Disposition of Tax Acquired Property shall govern. For purposes of this policy, the term “real estate” refers to fee simple ownership of the real estate by the Town.

II. Sale of Town Owned Real Estate

1. The Town will sell other real estate by sealed bid and only after the Town Council shall have authorized the bid process. Before the Town Council may take final action regarding the sale of real estate; the requirements of this paragraph shall be satisfied.
 - a) The Town Council shall refer the potential sale to the Scarborough Parks and Conservation Land Board (hereinafter “SPCLB”) for its formal review and recommendation, and to the Town Manager, who shall survey all municipal departments, the School Department, the Scarborough Sanitary District (hereinafter “SSD”), and the Scarborough Historical Society recommendations for significance and potential public uses. The Town Manager shall prepare a document containing the recommendations from the departments and a summary on how the property was attained.
 - b) The SPCLB shall have up to 60 calendar days to make a recommendation to the Town Council. The Town Council may not commence with the sale until the 60-day period has lapsed. All recommendations from staff, the SSD and the SPCLB are advisory and are not binding on the Town Council.
 - c) The Town Council shall schedule and hold a public hearing on the potential disposition of the real estate with the same notice requirements as are then in place for zoning variances. The Town Council may also have a site visit prior to the public hearing.
 - d) Notices shall be sent to all immediate abutters of the real estate to inform them that the process for potential disposition has begun. Notice of the sealed bid process shall be given to all abutters by regular mail.
 - e) The Town may wish to impose restrictions on the sale of the real estate in the form of encumbrances such as deed restrictions and/or covenants. In such case, any and all encumbrances shall be clearly identified in the bid documents.
 - f) Unless otherwise directed by the Town Council, the bid process shall be competitive and shall strictly conform to the requirements of the Formal Bid process as prescribed by the Purchasing Policy (Chapter 304). In certain cases the Town may choose to entertain a request-for-proposal process in attempt to ascertain details regarding the intended use.

III. Award of Bid

The Town Council maintains the sole discretion regarding the award of bids and the sale of real estate. Awards shall be to the highest and best bidder, considering such factors, where appropriate, as the value of the consideration offered, the use to which the property will be put after the sale, and the effect of such use on the Town. The Town Council shall reserve the right to accept or reject any or all bids. Upon award, the Town will issue a municipal release deed for the premises. In all agreements pertaining to the sale of the property, including, but not limited to, the purchase and sale agreement and the municipal release deed. It shall be made clear that should the property be resold, the Town of Scarborough will have the right to first refusal. The Town Council shall direct the appropriate repository for the proceeds of the sale.