

SUBDIVISION ORDINANCE FOR THE TOWN OF SWAN'S ISLAND, MAINE

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SUBDIVISION STANDARDS OF THE TOWN OF SWAN'S ISLAND, MAINE

SECTION I. PURPOSES

The purpose of these standards shall be to assure the comfort, convenience, safety, health and welfare of the people, to protect the environment and to promote the development of an economically sound and stable community. To this end, in approving subdivisions within the Town of Swan's Island, Maine, the Planning Board shall consider the following criteria and before granting approval shall affirmatively determine that the proposed subdivision:

1. Will not result in undue water or air pollution. In making this determination it shall at least consider: the elevation of land above sea level and its relation to the flood plains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable state and local health and water resources regulations.
2. Has sufficient water available for the reasonably foreseeable needs of the subdivision.
3. Will not cause an unreasonable burden on an existing water supply, if one is to be utilized.
4. Will not cause an unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.
5. Will not cause unreasonable highway, public road, or other public congestion or unsafe conditions with respect to use of the highways or public roads existing or proposed.
6. Will provide for adequate sewage waste disposal and will not cause an unreasonable burden on the ability of a municipality to dispose of solid waste and sewage if municipal services are to be utilized.
7. Municipal solid waste and sewage disposal. The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste and sewage, if municipal services are to be utilized.
8. Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.

9. Is in conformance with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan, or land use plan.
10. The subdivider has adequate financial and technical capacity to meet the above stated standards.
11. Whenever situated, in whole or in part within the watershed of any pond or, within 250 feet of any wetland, great pond, lake, river or tidal waters as defined in Title 38, Chapter 3, subchapter I, will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water.
12. Will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.
13. Flood areas. Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant, whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plat approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation.
14. Freshwater wetlands. All potential freshwater wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local Soil and Water Conservation District.
15. River, stream or brook. Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this Section, "river, stream or brook" has the same meaning as in Title 38, Section 480-B, subsection 9.
16. Storm water. The proposed subdivision will provide for adequate storm water management.

SECTION II. AUTHORITY AND ADMINISTRATION

2.1 Authority

These standards have been prepared in accordance with the provisions of Title 30-A, M.R.S.A., Sections 4401-4407 (Subdivision Law) and Section 1917

(Home Rule); and Article VIII, Part 2, Section I of the Maine State Constitution.

2.2 Administration

- A. The Planning Board of the Town of Swans Island, hereinafter called the Board, shall administer these standards.
- B. The provisions of these standards shall pertain to all proposed subdivisions as herein defined within the boundaries of the Town of Swans Island.
- C. The Planning Board may, from time to time, approve the use of forms for applications and submissions for approval which the applicant shall use in making application to the Board.

SECTION III. DEFINITIONS

In general, words and terms used in these regulations shall have their customary dictionary meanings. More specifically, certain words and terms used herein are defined as follow:

Complete Application - An application shall be considered complete upon submission of the required fee and all information required by these regulations for a Final Plan, or by a vote by the Board to waive the submission of required information.

Comprehensive Plan or Policy Statement - Any part or element of the overall plan or policy for development of the municipality as defined in Title 30 M.R.S.A., Section 4961.

Contiguous Lots - Lots which adjoin at any line, a point on a line, or are separated at any point by a body of water less than fifteen (15) feet wide.

Contractors Liability - Any contractor, subdivider or his agent involved in any activity regulated by the provisions of this Ordinance shall be held liable for violating this Ordinance if the necessary permits for the said activity have not been obtained.

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

Developed Area - Any area on which a site improvement or change is made, including buildings, landscaping, parking areas, etc.

Dwelling Structure - A single building containing one or more dwelling units.

Dwelling Unit - A room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters through sale or lease for only one (1) family or person, including single-family and multifamily housing, condominiums, apartments and time share units.

Family - One or more person occupying a dwelling unit and living as a single housekeeping unit.

Final Plan - The final drawings on which the applicant's plan of subdivision is presented to the Board for approval and which, if approved, may be recorded at the Registry of Deeds.

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

- A. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and
- B. Not considered part of a great pond, coastal wetland, river, stream or brook.

These areas may contain small stream channels or inclusions of land that do not conform to the criteria of this subsection.

Lodging Unit - Any structure used in whole or in part in which lodging is offered for compensation to three (3) or more families with or without meals, including, but not limited to, hotel, motel, boarding house, or bed and breakfast.

Marine-Related Activities - Operations may include activities associated with the maintenance, storage, building, and supply of boats; or landing, holding, buying, selling, and shipment of fish and shellfish, but may not include fish processing without prior approval by the State and Town. Any change in the use of a marine-related structure or a marine-related activity shall require approval by the Board.

Marine-Related Structure - Marine-related structures may be used for activity associated with the maintenance, storage, building, and supply of boats; or the landing, holding, buying, selling, and shipment of fish and shellfish, but may not include fish processing without prior approval by the State and Town. A marine-related structure shall be no larger than necessary to carry on the marine activity(ies) intended, and shall be consistent with existing conditions, uses, and

the character of the area. This definition shall not be construed to allow dwelling units within seventy-five (75) feet of the shoreline boundary.

Multi-Family Dwelling Unit - A building or portion thereof used for residential occupancy by three or more families living independently.

100-Year Flood - The highest level of flood that, on the average, is likely to occur once every 100 years (that has a one percent chance of occurring in any year).

Official Submittal Date - The date upon which a complete application has been submitted to the Board.

Person - Includes a firm, association, organization, partnership, trust, company, or corporation, as well as an individual.

Planning Board - The Planning Board of the Town of Swans Island, created under Title 30 M.R.S.A., 4952 (or 1917).

Preliminary Subdivision Plan - The preliminary drawings indicating the proposed layout of the subdivision to be submitted to the Board for its consideration.

Recording Plan - A copy of the Final Plan will be recorded at the Registry of Deeds.

Resubdivision - Any change in the plan of an approved subdivision which effects the lot lines, including land transactions by the subdivider not indicated on the approved plan.

Road - A vehicular way over 500 feet in length or a vehicular way serving more than one principal structure or more than one lot upon which dwellings could be built.

Shoreline Boundary - The line where terrestrial vegetation and soil ends and aquatic vegetation or shore material (such as ledge, rock, stones, pebbles, or sand) begins.

Structure - Structure shall mean anything constructed or erected with a fixed location on or in the ground, or attached to something having a fixed location on or in the ground, including but not limited to: buildings, mobile homes, radio and television sending and receiving equipment, walls, billboards, signs, piers, floats; anything built for the support, shelter, or enclosure of person, animals, goods, or property of any kind.

Structure, Accessory - A subordinate structure or use, but related to that of the principal structure/use of the building, or use of the land.

Structure, Principal - A structure associated with the primary use of the lot.

Structure or Structures, New - "New structure or structures" includes any structure for which construction begins on or after September 23, 1988. The area included in the expansion of an existing structure is deemed to be a new structure for the purposes of these standards.

Subdivision - The division of a tract or parcel of land into three or more lots within any five-year period, which period begins after September 22, 1971, whether accomplished by sale, lease, development, buildings, or otherwise, the term "subdivision" also includes the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a five-year period, the construction of 3 or more dwelling units on a single tract or parcel of land and the division of an existing structure or structures previously for commercial or industrial use into 3 or more dwelling units with a five-year period, provided that a division accomplished by devise, condemnation, order of court, gift to a person related to the donor by blood, marriage or adoption, unless the intent of such division is to avoid the objectives of these regulations, or by transfer of any interest in land to the owner of land abutting thereon, shall not be considered to create a lot or lots for the purpose of these regulations.

In determining whether a tract or parcel of land is divided into three or more lots, the first dividing of such tract or parcel, unless otherwise exempted herein, shall be considered to create the first two lots and the next dividing of either of said first two lots, by whomever accomplished, unless otherwise exempted herein, shall be considered to create the third lot, unless both such dividings are accomplished by a subdivider who shall have retained one of such lots for his own use as a single family residence or for open space land as defined in Title 36, Section 1102, for a period of at least five years prior to such second dividing. Lots of forty (40) or more acres shall not be counted as lots, except when the lot or parcel from which it was divided is located entirely or partially within any shoreland area as defined in Title 38, Section 435, and the Swans Island Shoreland Zoning Ordinance.

For the purposes of these regulations, a tract or parcel of land is defined as all contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road are considered each a separate tract or parcel of land unless the road was established by the owner of land on both sides of the road.

Without limiting the foregoing, the establishment on a tract or parcel of land of a multi-family dwelling unit, or the division of an existing structure or structures previously used for commercial or industrial use, whether for sale or rent or the establishment on a tract or parcel of land of a lodging unit, shall constitute a subdivision within the above definition.

In determining the number of dwelling units in a structure, the provisions of this subsection regarding the determination of the number of lots apply, including exemptions from the definition of a subdivision of land.

SECTION IV. PREAPPLICATION

4.1 Procedure

- A. Applicant presentation and submission of sketch plans.
- B. Question and answer period. Board makes specific suggestions to be incorporated by the applicant into subsequent submissions.
- C. Scheduling of on-site inspection.

4.2 Submission. The Pre-application Sketch Plan shall show, in simple sketch form, the proposed layout of streets, lots, and other features in relation to existing conditions. The Sketch Plan, which may be a free-hand penciled sketch, should be supplemented with general information to describe or outline the existing conditions of the site and the proposed development. The Sketch Plan shall be accompanied by a copy of the U.S.G.S. topographic map of the area showing the outline of the proposed subdivision.

4.3 Contour Interval and On-Site Inspection. Within thirty days plus the number of days until the next regular Board meeting, the Board shall determine and inform the applicant in writing of the required contour interval on the Preliminary Plan, and hold an onsite inspection of the property.

4.4 Rights Not Vested. The submittal or review of the pre-application sketch plan shall not be considered the initiation of the review process for the purposes of bringing the plan under the protection of Title 1, M.R.S.A., 302.

4.4 Ownership. A copy of the deed or binding Purchase and Sales Agreement showing ownership of the proposed subdivision shall be submitted.

SECTION V. PRELIMINARY PLAN FOR A SUBDIVISION

5.1 Procedure

- A. Within six months after the on-site inspection by the Board, the subdivider shall submit an application for approval of Preliminary Plan at least fourteen (14) days prior to a scheduled meeting of the Board.

Failure to do so shall require resubmission of the Sketch Plan to the Board. The Preliminary Plan shall approximate the layout shown on the Sketch Plan plus any recommendations made by the Board.

- C. All applications for Preliminary Plan approval shall be accompanied by a fee of \$100.00 per lot or dwelling unit, payable by check to the municipality. If a public hearing is deemed necessary by the Board, an additional fee shall be required to cover the costs of advertising and postal notification.
- C. The subdivider, or his duly authorized representative, shall attend the meeting of the Board to discuss the Preliminary Plan.
- D. The subdivider shall certify to the Board that all owners of abutting property have been notified that an application for subdivision approval has been submitted to the Board.
- E. Within thirty days of receipt of Preliminary Plan application form and fee plus the number of days until the next regular Board meeting, the Board shall notify the applicant in writing, if the application is complete, or what additional submissions are required for a complete application. After the Board has determined that a complete application has been filed, it shall notify the applicant and begin its full evaluation of the proposed subdivision.
- F. The Board shall determine whether to hold a public hearing on the Preliminary Plan application. If the Board decides to hold a public hearing, it shall hold the hearing within thirty days after determining it has received receipt of a complete application, and shall post notice of the date, time, and place of the hearing in the municipality at least two times, the date of the first publication to be at least seven days prior to the hearing.
- G. The Board shall, within thirty days of a public hearing, or within sixty days plus the number of days until the next regular Board meeting, after determining it has received receipt of a complete application, if no hearing is held, or within another time limit as may be otherwise mutually agreed to by the Board and the subdivider, make findings of fact on the application, and approve, approve with conditions, or deny the Preliminary Plan. The Board shall specify in writing its findings of fact and reasons for any conditions or denial.
- H. When granting approval to a Preliminary Plan, the Board shall state the conditions of such approval, if any, with respect to:
 - 1. The specific changes which it will require on the Final Plan;

2. The character and extent of the required improvements for which waivers may have been requested and which in the Board's opinion may be waived without jeopardy to the public health, safety, and general welfare; and
 3. The amount of improvement or the amount of all performance guarantees which it will require as prerequisite to the approval of the Final Plan.
- I. Approval of a Preliminary Plan shall not constitute approval of the Final Plan or intent to approve the Final Plan, but rather it shall be deemed an expression of approval of the design of the Preliminary Plan as a guide to the preparation of the Final Plan. The Final Plan shall be submitted for approval of the Board upon fulfillment of the requirements of these regulations and the conditions of the preliminary approval, if any. Prior to approval of the Final Plan, the Board may require additional changes as a result of further study of the subdivision or as a result of new information received.

5.2 Submissions

- A. Location Map: The Preliminary Plan shall be accompanied by a Location Map drawn at a scale adequate to show the relationship of the proposed subdivision to the adjacent properties, and to allow the Board to locate the subdivision within the municipality. The Location Map shall show:
1. Existing subdivisions in the proximity of the proposed subdivision.
 2. Locations and names of existing and proposed streets.
 3. Boundaries and designations of zoning districts.
 4. An outline of the proposed subdivision and any remaining portion of the owner's property if the Preliminary Plan submitted covers only a portion of the owner's entire holding.
- B. Preliminary Plan: The Preliminary Plan shall be submitted in three copies of one or more maps or drawings which may be printed or reproduced on paper with all dimensions shown in feet or decimals of a foot. The Preliminary Plan shall be drawn to a scale of not more than one hundred feet to the inch provided all necessary detail can easily be read. In addition, one copy of the Plan(s) reduced to a size of 8 1/2 x 11 inches shall be mailed to each Board member no less than seven days prior to the meeting. The following information shall either be shown on

the Preliminary Plan or accompany the application for preliminary approval:

1. Proposed name of the subdivision and the name of the municipality in which it is located, plus lot numbers.
2. An actual field survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor. The corner of the tract shall be located on the ground and marked by monument. The plan shall indicate the type of monument set or found at each lot corner.
3. A copy of the deed from which the survey was based. A copy of all covenants or deed restrictions, easements, rights-of way, or other encumbrances currently affecting the property.
4. A copy of any covenants or deed restriction intended to cover all or part of the lots in the subdivision, including road maintenance and snow removal agreements.
5. Contour lines at the interval specified by the Planning Board, showing elevations in relation to mean sea level.
6. The number of acres within the proposed subdivision, location of property lines, existing buildings, watercourses, vegetative cover type, shoreline boundaries, and other essential existing physical features.
7. Indication of the type of sewage disposal to be used in the subdivision.
 - a. When treated sewage is to be discharge overboard, a letter from the DEP, indicating the adequacy of the body of water receiving the discharge of treated sewage, shall be submitted.
 - b. When sewage disposal is to be accomplished by subsurface sewage disposal systems, test pit analysis, prepared by a Licensed Site Evaluator shall be provided. A map showing the location of all test pits dug on the site shall be submitted.
8. Indication of the type of water system(s) to be used in the subdivision.
9. The date the Plan was prepared, magnetic north point, graphic map scale, names and addresses of the record owner, subdivider, and

individual or company who prepared the plan.

10. The names and addresses of owners of record of adjacent property, including any property directly across an existing road from the subdivision.
11. The location of any zoning boundaries affecting the subdivision.
12. The location and size of existing and proposed sewers, water mains, culverts, and drainage ways on or adjacent to the property to be subdivided.
13. The location, names, and present widths of existing and proposed streets, highways, easements, building lines, parks and other open spaces on or adjacent to the subdivision.
14. The proposed lot lines with dimensions and lot areas.
15. All parcels of land proposed to be dedicated to public use and the conditions of such dedication.
16. The location of any open space to be preserved and an indication of its improvement and management.
17. A soil erosion and sedimentation control plan endorsed by the County Soil and Water Conservation District may be required by the Planning Board.
18. A copy of that portion of the County Soil Survey covering the subdivision. When the medium intensity soil survey shows soils which are generally unsuitable for the uses proposed, the Board may require the submittal of a report by a registered soil scientist indicating the suitability of soil conditions for those uses.

SECTION VI. FINAL PLAN FOR A SUBDIVISION

6.1 Procedure

- A. The subdivider shall, within six months after the preliminary approval of the Preliminary Plan, file with the Planning Board an application for approval of the Final Subdivision Plan in the form described herein. If the Final Plan is not submitted to the Planning Board within six months after the approval of Preliminary Plan, the Planning Board may refuse without prejudice to act on the Final Plan and require re-submission of the Preliminary Plan.

- B. Within thirty (30) days plus the number of days until the next regular Board meeting of receipt of a Final Plan application form and fee, the Board shall notify the applicant in writing, if the application is complete, or what additional submissions are required for a complete application. After the Board has determined that a complete application has been filed, it shall notify the applicant and begin its full evaluation of the proposed subdivision.
- C. The subdivider, or his duly authorized representative, shall attend the meeting of the Board to discuss the Final Plan.
- D. Upon determination that a complete application has been submitted for review, the Board shall determine whether to hold a public hearing on the Final Plan application.
- E. Prior to submittal of the Final Plan application, the following approvals shall be obtained in writing, where appropriate.
 - 1. Maine Department of Environmental Protection, under the Site Location of Development Act, Alteration of Coastal Wetlands Act, Great Ponds Act, Alteration of Stream and Rivers Act, or if a Wastewater Discharge License is needed.
 - 2. Maine Department of Human Services, if the subdivider proposes to provide a central water supply system.
 - 3. Maine Department of Human Services, if a centralized or shared subsurface sewage disposal system(s) is to be utilized.
- F. A public hearing may be held by the Planning Board within thirty days after the issuance of a receipt for the submittal of a complete application. Notice of the hearing shall be posted in at least three prominent places at least seven days prior to the hearing.
- G. Before the Planning Board grants approval of the Final Plan, the subdivider shall, in an amount set by the Planning Board, either file with the Municipal Treasurer a certified check to cover the full cost of the required improvements, or the subdivider shall file with the Municipal Treasurer a performance bond to cover the cost of the required improvements. Any such bond shall be satisfactory to the Municipal Officers and municipal attorney as to form, sufficiency, manner of execution and surety. A period of one year (or such other period as the Planning Board may determine appropriate, not to exceed three years) shall be set forth in the bond time within which required improvements must be completed. The certified check or bond may include an amount

required for recreation land improvements as specified.

- H. From the date of receipt of the Final Plan the Board shall have sixty (60) days plus the number of days until the next regular Board meeting or within another time limit as may be mutually agreed to by the Board and the subdivider plus the number of days until the next regular Board meeting to approve, modify and approve, or disapprove the Final Plan. The reasons for any modifications required or the grounds for disapproval shall be stated upon the records of the Planning Board. Failure of the Planning board to act within the above period shall constitute disapproval of the Final Plan.

6.2 Submissions

- A. The Final Plan shall consist of one or more maps or drawings to a scale of not more than one hundred feet to the inch. Plans for subdivisions containing more than seventy-five acres may be drawn at a scale of not more than two hundred feet to the inch. Plans shall be no larger than 24 x 36 inches in size, and shall have a margin of two inches outside of the border line on the left side for binding and a one inch margin outside the border along the remaining sides. Space shall be reserved thereon for endorsement by the Board. Two reproducible, stable based transparent originals, one to be recorded at the Registry of Deeds, then other to be filed at the Municipal Offices, and three copies of the plan submitted.

The subdivider may, instead, submit one reproducible stable based transparent original of the Final Plan and one Recording Plan with three copies of the Final Plan. In addition, one copy of the Final Plan, which may be reduced to a size of 8 1/2 x 11 inches, and all accompanying information shall be mailed to each Board member no less than seven days prior to the meeting.

The application for approval of the Final Plan shall include the following information.

1. Proposed name of the subdivision and the name of the municipality in which it is located, and lot numbers.
2. An actual field survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor. The corner of the tract shall be located on the ground and marked by monument. The plan shall indicate the type of monument set or found at each lot corner.
3. The number of acres within the proposed subdivision, location of property

lines, existing shoreline boundary lines, existing buildings, watercourses, and other essential existing physical features.

4. Indication of the type of sewage disposal to be used in the subdivision.
5. Indication of the type of water supply system(s) to be used in the subdivision.
6. The date the Plan was prepared, magnetic and true north point, graphic map scale, names and address of the record owner, subdivider, and individual or company who prepared the plan.
7. The location of any zoning boundaries affecting the subdivision.
8. The location and size of existing and proposed sewers, culverts, and drainage ways on or adjacent to the property to be subdivided.
9. The location, names, and present widths of existing and proposed streets, highways, easements, building lines, parks and other open spaces on or adjacent to the subdivision. The plan shall contain sufficient data to allow the location, bearing and length of every street line, lot line, and boundary line to be readily determined and be reproduced upon the ground. These lines shall be tied to reference points previously established.
10. All parcels of land proposed to be dedicated to public use and the conditions of such dedication. Written offers of cession to the municipality of all public open spaces shown on the Plan, and open spaces to be retained by the developer or lot owners are to be maintained shall be submitted. If open space or other land is to be offered to the municipality, written evidence that the Municipal Officers are satisfied with the legal sufficiency of the written offer of cession shall be included.
11. A list of the construction items that will be completed by the developer prior to the sale of lots shall be submitted.

6.3 Final Approval and Filing

- A. No plan shall be approved by the Planning Board as long as the subdivider is in default on the previously approved Plan.
- B. Upon findings of fact and determination that all standards in Title 30 30-A, M.R.S.A. 4956 4401, subsection 3, and these regulations have been met, and upon voting to approve the subdivision, the Board shall sign the Final Plan. One copy of the signed plan shall be retained by the Board as part of its permanent records. One copy of the signed plan shall be

forwarded to the Tax Assessor. One copy of the signed plan shall be forwarded to the Code Enforcement Officer. Any subdivision not recorded in the Registry of Deeds within thirty days of the date upon which the plan is approved and signed by the Board shall become null and void. The approved Final Plan will not be considered in effect until said Plan is filed with the Registry of Deeds and a certified copy received by the Planning Board.

- C. If any aspect of the Board approval is conditional, the specific conditions shall be stated on the Final Plan prior to signing by the Board.
- D. At the time the Board grants Final Plan approval, it may permit the Plan to be divided into two or more sections subject to any conditions the Board deems necessary in order to insure the orderly development of the Plan.
- E. No changes, erasures, modifications, or revisions shall be made in any Final Plan after approval has been given by the Planning Board and endorsed in writing on the Plan, unless the revised Final Plan is first submitted and the Board approves any modifications, except in accordance with Section 7.1.C. The Board shall make findings that the revised plan meets the standards of Title 30 30-A, M.R.S.A., 4956 4401, subsection 3, and these regulations. In the event that a Plan is recorded without complying with this requirement, it shall be considered null and void, and the Board shall institute proceedings to have the Plan stricken from the records of the Registry of Deeds.
- F. The approval by the Board of a subdivision plan shall not be deemed to constitute or be evidence of any acceptance by the municipality of any street, easement, or other open space shown on such plan. When a park, playground, or other recreation area shall have been shown on the Plan to be

dedicated to the municipality, approval of the Plan shall not constitute an acceptance by the municipality of such areas. The Board shall require the Plan to contain appropriate notes to this effect. The Board may also require the filing of a written agreement between the applicant and the Municipal Officers covering future deeds and title, dedication, and provision for the cost of grading, development, equipment, and maintenance of any such dedicated area.

SECTION VII. ENFORCEMENT

7.1 Inspection of Required Improvements

- A. At least five days prior to commencing each major phase of construction of required improvements, the subdivider or agent shall notify the Code Enforcement Officer in writing the time when he proposes to commence construction of such improvements, so that the Municipal Officers can cause inspection to be made to assure that all municipal specifications and requirements shall be met during the construction of required improvements, and to assure the satisfactory completion of improvements and utilities required by the Board.
- B. If the inspecting official finds upon inspection of the improvements that any of the required improvements have not been constructed in accordance with the plans and specifications filed by the subdivider, he shall so report in writing to the Municipal Officers, Planning Board, and the subdivider or agent. The Municipal Officers shall take any steps necessary to preserve the municipality's rights.
- C. If at any time before or during the construction of the required improvements, it appears to be necessary or desirable to modify the required improvements, the inspecting official is authorized to approve minor modifications due to unforeseen circumstances such as encountering hidden outcrops of bedrock, natural springs, etc. The inspecting official shall issue any approval under this Section in writing and shall transmit a copy of the approval to the Board. Revised plans shall be filed with the Town. For major modifications, such as relocation of rights-of-way, property boundaries, etc., the subdivider shall obtain permission to modify the plans from the Board.
- D. Prior to the sale of any lot, the subdivider shall provide the Board with a letter from a registered land surveyor, stating that all monumentation shown on the plan has been installed.
- E. If there are any underground utilities, the servicing utility shall certify in writing that they have been installed in a manner acceptable to the utility.
- F. The subdivider or agent shall be required to maintain all improvements.
- G. The subdivider or agent shall provide for snow removal and

sanding for residences in use and to ensure public safety.

7.2 Violations and Enforcement

- A. No plan of a division of land within the municipality which would constitute a subdivision shall be recorded in the Registry of Deeds until a Final Plan has been approved by the Board in accordance with these regulations.
- B. No person, firm, corporation or other legal entity may convey, offer or agree to convey any land in a subdivision which has not been approved by the Board and recorded in the Registry of Deeds. A recorded copy of the subdivision, stamped by the Registry of Deeds, shall be returned to the Board within 30 days.
- C. No person, firm, corporation or their legal entity may convey, offer or agree to convey any land in an approved subdivision which is not shown on the Final Plan as a separate lot.
- D. Any person, firm, corporation or other legal entity who conveys, offers or agrees to convey any land in a subdivision which has not been approved as required by these regulations shall be punished by a fine of not less than \$100.00 for each such conveyance, offering or agreement. The Attorney General, the municipality, the Planning Board of any municipality or the appropriate municipal officers may institute proceedings to enjoin the violations of this Section and if a violation is found by the court, the municipality, municipal Planning Board, or the appropriate municipal officers shall be allowed attorney fees. Each day in which a violation is proven to exist shall constitute a separate violation under this Section.
- E. No public utility, water district, sanitary district or any utility company of any kind shall serve any lot in a subdivision for which a Final Plan has not been approved by the Board.
- F. Development of a subdivision without Board approval shall be a violation of law. Development includes grading or construction of roads, grading of land or lots, or construction of buildings which require a Final Plan approved as provided in these regulations and recorded in the Registry of Deeds.
- G. No lot in a subdivision may be sold, leased, or otherwise conveyed before the road upon which the lot fronts is completed in accordance with these regulations up to and including the

entire frontage of the lot. No unit in a multifamily development shall be occupied before the street upon which the unit is accessed is completed in accordance with these regulations.

H. Permanent marker required. No person may sell or convey any land in an approved subdivision unless at least one permanent marker is set at one lot corner of the lot sold or conveyed. The term "permanent marker" includes, but is not limited to, the following:

1. A granite monument;
2. A concrete monument;
3. An iron pin; or
4. A drill hole in ledge.

SECTION VIII. GENERAL STANDARDS

In reviewing applications for a subdivision, the Board shall consider the following general standards and make findings that each has been met prior to the approval of a Final Plan. In all instances the burden of proof shall be upon the applicant.

8.1 Conformance with Comprehensive Plan. All proposed subdivisions shall be in conformity with the Comprehensive Plan of the municipality and with the provisions of all pertinent State and local codes and ordinances.

8.2 Retention of Open Spaces and Natural or Historic Features

- A. In any subdivision larger than thirty-five acres, or more than twenty lots or dwelling units, the developer shall provide up to ten percent of his total area as open space. In any subdivision thirty-five acres or less, or containing twenty lots or dwelling units or less, the Board may request the developer to provide up to ten percent of his total area as open space.
- B. Land reserved for open space purposes shall be of a character, configuration and location suitable for the particular use intended. A site intended to be used for active recreation purposes, such as a playground or a play field, should be relatively level and dry, have a total frontage on one or more streets of at least 200 feet, and have no major dimensions of less than 200 feet. Sites selected primarily for scenic or

passive recreation purposes shall have access as the Board may deem suitable and no less than twenty-five feet of road frontage. The configuration of such sites shall be deemed adequate by the Board with regard to scenic attributes to be preserved, together with sufficient areas for trails, lookouts, etc. where necessary and appropriate.

- C. Reserved land acceptable to the Board and subdivider may be dedicated to the municipality as a condition of approval.
- D. The Board may require the preservation of scenic, historic or environmentally significant areas.
- E. Where the proposed subdivision is located on a lake, pond, river, stream or shoreline, a portion of the waterfront area, when feasible, shall be included in the reserved land.

8.3 Land Not Suitable for Development. The following lands shall not be included in the calculations of lot area for the purpose of meeting the requirements of the Minimum Lot Size Law.

- A. Land which is situated below the normal high water mark of any water body.
- B. Land which is located within the 100-year frequency flood plan as identified by the Federal Emergency Management Agency or the Department of Housing and Urban Development, Flood Insurance Administration, unless the subdivider shows proof through the submittal of materials prepared by a registered land surveyor which show that the property in question lies at least two feet above the 100-year flood level. The elevation of filled or made land shall not be considered.
- C. Land which is part of a right-of-way, or easement, including utility easements.
- D. Wherever situated, in whole or in part, within 250 feet of the high water line of any pond, lake, river or tidal waters, a proposed subdivision shall conform to the Municipal Shoreland Zoning Ordinance, or any other local land use ordinances.

8.4 Lots

- A. All lots shall be a minimum of two (2) acres in size, not including rights-of-way, roads, easements, or land not in the same ownership, or below the shoreline boundary, except those lots situated within the Fishery District

only, and use for marine-related activities shall have no minimum lot size. Each lot shall contain within its boundaries a rectangle 200 x 300 feet.

- B. Lot configuration and area shall be designed to provide for adequate off-street parking and service facilities based upon the type of development contemplated.
- C. A lot abutting a road shall have a minimum frontage of 200 feet, measured in a straight line between the points of intersection of the side lot lines with the abutting road.
- D. A lot abutting a pond, stream, or tidal water shall have a minimum shore frontage of 200 feet, measured in a straight line between the points of intersection of the side lot lines with the shoreland boundary.
- E. Lots with overboard discharge systems shall have a minimum of 300 feet on the shoreland boundary.
- F. Dimensional Requirements - The placement of principal and accessory structures on all lots shall meet or exceed the following minimum requirements:
 - 1. Seventy-five (75) foot setback from the shoreline boundary of any pond or salt water body;
 - 2. Sixty (60) foot setback from the center line of the traveled way of all roads open to the public;
 - 3. Ten (10) foot setback from the center line of any utility right-of-way;
 - 4. Thirty (30) foot setback from all property lines.

Provisions one (1) and two (2) shall not apply to marine-related structures which require direct access to the water as an operational necessity. Provision four (4) shall not apply to marine-related structures in the Fishery District.
- G. Where a tract is subdivided into lots substantially larger than the minimum size required herein, the Board may require that street and lot be laid out so as to permit future subdivision in accordance with the requirements contained in these standards.
- H. No lot in a subdivision may be further subdivided without the approval of the Planning Board.
- I. If more than one principal structure or dwelling structure is construct on a

single parcel, all lot standards and dimensions requirements shall be met for each additional principal structure or dwelling structure.

- J. A multi-family dwelling, lodging unit, condominium and cluster subdivision shall have a minimum lot size equal to two acres for the first family unit plus one-half acre for each additional individual family unit located thereon and shall fully comply with all setback requirements of these regulations and all provisions of the Municipal Shoreland Zoning Ordinance.

Commercial activities serving or open to person(s) occupying the lodging unit, which are constructed or included as part of apartments, boarding houses, hotels, and motels shall require a minimum of one acre of additional land for each separate commercial activity.

- K. Renovation of existing structure for the purpose of creating a bed and breakfast lodging:

1. Limited to not more than 4 bedrooms for rent per structure.
2. Must conform to present Maine State Plumbing Code.
 - a. Plumbing conversions permit.
 - b. Letter of compliance from local plumbing inspector.
3. Must conform to present Maine State Electrical Code.
 - a. Letter of compliance from master electrician.
4. Must conform to present Maine State Fire Code.
 - a. Letter of compliance from fire chief.
5. Shall provide one off-street parking space (10'x 20') for each bedroom.
6. Owner or person in charge shall have their residence in the same structure containing rooms for rent.
7. Must obtain proper license from the Department of Human Services and furnish the Planning Board with a copy of that license.

8.5 Utilities

- A. The type and location of electric, telephone, and other utilities shall be shown on the plan and approved by the Board.

- B. The following are required improvements: monuments, utilities, roads, Water supply, sewage disposal and storm drainage, except where the Board may waive or vary such improvements in accordance with the provisions of these standards.

SECTION IX. DESIGN STANDARDS

9.1 Monuments

- A. Permanent monuments shall be set at all corners and angle points of the Subdivision boundaries; and at all street intersections.
- B. Monuments shall be concrete, stone or iron pipe, located in the ground and indicated on the Final Plan.

9.2 Off-Street Parking and Loading

- A. Off-street parking, either by means of unenclosed suitable spaces each having a minimum area of 200 square feet plus necessary maneuvering space, or by enclosed garage space, shall be provided in the case of new construction, alterations and changes of use, according to the following minimum requirements:
1. **Single-family dwelling unit:** Two (2) spaces for each dwelling unit.
 2. **Commercial establishments:**
 - . Restaurant: One parking space for every four (4) seats;
 - . Retail store: One space for each one hundred (100) square feet of retail floor space;
 - . All other commercial establishments: One space for each three hundred (300) square feet of floor area.
 3. **Churches and places of assembly:** One space for each four (4) persons accommodated.

9.3 Roads

- A. Roads shall be located, constructed, and maintained so that erosion is kept to a minimum. Adequate provisions shall be made to prevent soil erosion and sedimentation of surface waters.
- B. Additionally, all roads constructed shall conform to the following standards:

1. Road crossings of watercourses shall be kept to the minimum number necessary.
2. Bottoms of culverts shall be installed at streambed elevation.
3. All cut or filled banks and areas of exposed mineral soil shall be re-vegetated or otherwise stabilized as soon as possible.
4. When road crossings of watercourses are to be used on unfrozen surface waters, bridges or culverts of adequate size and design shall be provided so as to support a Gross Vehicle Weight of 72,000 pounds.
5. The arrangement, character, extent, width, grade, and location of all roads shall be considered in their relation to existing or planned roads, to topographical conditions, to public convenience, to safety, and to the proposed uses to be served by such roads. Grades of roads shall conform as closely as possible to the original topography.
6. All roads within the subdivision shall be constructed according to design specifications herein as overseen by the municipal road commissioner, appointed engineer, or agent. All roads shall be capable of supporting at least a Gross Vehicle Weight of 72,000 pounds.

Height clearance	13'6"
Minimum width of right-of-way	66'
Minimum width of traveled way	20'
Maximum grade	10%
Maximum grade within 50' of intersection	5%
Maximum angle of intersection	60o
Minimum width of shoulder	3'
Minimum slope of shoulder	20%
Minimum centerline radii on curves	100'
Minimum setback from shoreline boundary	75'
Road base (bank run gravel)	18"
Gravel surface (1 1/2 screened gravel)	6"
Road crown (minimum)	1/4"/ft
Dead end roads without cul-de-sac/maximum length	500'
Cul-de-sac/radius to outside edge of traveled way	80'

7. Road intersections and curves shall be so designed as to permit adequate visibility for both pedestrian and vehicular traffic. That portion of any corner lot which is necessary to allow 25 foot sight line between intersection roads shall be cleared of all obstructions above the level of 3 feet measured from the elevation of the centerline of the road. Earth moving may be required to achieve adequate viability.

8. A vehicle turn-out shall be provided every 500 feet. Each shall be a minimum of 15 feet wide, 25 feet deep, and shall be approved by the Director of the Department of Public Safety.
9. The subdivider shall submit arrangements for the future maintenance of all roads within the subdivision for approval by the Planning Board. The approved arrangement shall be recorded as a part of the Final Plan.
10. Design specifications listed herein are minimum standards for roads in a subdivision.

Any request for Town maintenance of a subdivision road will not be considered unless:

- a. All design specifications listed in 9.3 are met.
- b. Additional specifications for secondary Maine Department of Transportation roads as required by the Town Road Commissioner and Selectmen are met.
- c. Petition for an article of acceptance be placed in the warrant at a Regular or Special Town Meeting. Majority vote of the people Required approval.

9.4 Soil Information

At the expense of the subdivider, the Planning board may obtain the services of a Licensed site evaluator to check any soil information in a subdivision.

9.5 Water Supply

- A. The applicant shall present sufficient evidence to the Planning Board that the water supply system to be used will provide the quantity and quality of water necessary for the use intended before the Final Plan is approved by the Planning Board.
- B. A central water supply system with fire hydrants shall be installed, if applicable, at the expense of the subdivider, or if in the opinion of the Board service to each lot by a central water system is not feasible, the Board may allow individual wells to be used, which shall be installed at the expense of the subdivider on lots containing dwellings erected by the subdivider or his agent.
- C. The subdivider may construct ponds and dry hydrants to provide for adequate water storage for fire-fighting purposes. An easement shall be granted to the municipality granting access to the dry hydrants where

necessary. The Board may waive the requirement for fire ponds only upon submittal of evidence that the soil types in the subdivision will not permit their construction.

- D. If a central water supply system is provided by the subdivider, location and protection of the source, and design, construction, and operation of the distribution system and appurtenances and treatment facilities shall conform to the recommendations included in the "Manual for Evaluating Public Drinking Water Supplies", Public Health Service No. 1180 (1969).

9.6 Sewage Disposal

- A. A sanitary sewer system shall be installed at the expense of the subdivider on lots containing dwellings erected by the subdivider or his agent.
- B. The developer shall submit evidence of soil suitability for subsurface sewage disposal prepared by a Maine Licensed Site Evaluator in full compliance with the requirements of the State of Maine Plumbing Rules. In addition, test pit information shall be submitted indicating a suitable reserve area for soil for each lot.
- C. In no instance shall a disposal area be permitted on soils or on a lot which requires a New System Variance from the Plumbing Rules.
- D. In no case shall the overboard discharge pipe be closer than 100 feet to any property line. Lots with overboard discharge systems shall have a minimum of 300 feet on the shoreland boundary.

9.7 Surface Drainage

- A. Where a subdivision is traversed by a watercourse, drainage way, or future sewer line, or where the Board feels that surface water drainage to be created by the subdivision and owners of property abutting it, the Planning Board may require that there shall be provided an easement or drainage right-of-way, and culverts, catch basins, or other means of channeling surface water within such subdivision and over the property of owners abutting upon it, of such nature, width, and location as the Board deems adequate.
- B. The developer may be required to provide a statement from a civil engineer, registered in the State of Maine, that the proposed subdivision will not create erosion, drainage, or runoff problems either in the subdivision or in adjacent properties. The developer may also be required to submit a surface drainage plan showing ditching, culverts, easements, and other proposed improvements.

SECTION X. PERFORMANCE GUARANTEES

10.1 Types of Guarantees. With submittal of the application for Final Plan approval, the subdivider shall provide one of the following performance guarantees for an amount adequate to cover the total construction costs of all required improvements, taking into account the time-space of the construction schedule and the inflation rate for construction costs:

- A. Either a certified check payable to the Town or a savings account or certificate of deposit naming the Town as owner, for the establishment of an escrow account;
- B. A performance bond payable to the Town issued by a surety company approved by the Municipal Officers;
- C. An irrevocable letter of credit from a financial institution establishing funding for the construction of the subdivision, from which the Town may draw if construction is inadequate, approved by the Municipal Officers;
or
- D. An offer of conditional approval limiting the number of units built or lots sold until all required improvements have been constructed.

The conditions and amount of the performance guarantee shall be determined by the Board with the advice of the Town Engineer, Road Commissioner, Municipal Officers, and/or Town Attorney.

10.2 Contents of Guarantee. The performance guarantee shall contain a construction schedule, cost estimates for each major phase of construction taking into account inflation, provisions for inspections of each phase of construction, provisions for the release of part or all of the performance guarantee to the developer, and a date after which the developer will be in default and the Town shall have access to the funds to finish construction.

10.3 Escrow Account. A cash contribution to the establishment of an escrow account shall be made by either a certified check made out to the municipality, the direct deposit into a savings account, or the purchase of a certificate of deposit. For any account opened by the subdivider, the municipality shall be named as owner or co-owner, and the consent of the municipality shall be required for a withdrawal. Any interest earned on the escrow account shall be returned to the subdivider unless the municipality has found it necessary to draw on the account, in which case the interest earned shall be proportionately divided between the amount returned to the subdivider and the amount withdrawn to complete the required

improvements.

10.4 Performance Bond. A performance bond shall detail the conditions of the bond, the method for release of the bond or portions of the bond to the subdivider, and the procedures for collection by the municipality. The bond documents shall specifically reference the subdivision for which approval is sought.

10.5 Letter of Credit. An irrevocable letter of credit from a bank or other lending institution shall indicate that funds have been set aside for the construction of the subdivision and may not be used for any other project or loan.

10.6 Conditional Agreement. The Board, at its discretion may provide for the subdivider to enter into a binding agreement with the municipality in lieu of the other financial performance guarantees. Such an agreement shall provide for approval of the Final Plan on the condition that up to four lots may be sold or built upon until either:

- A. It is certified by the Board, or its agent, that all of the required improvements have been installed in accordance with these regulations and the regulations of the appropriate utilities; or
- B. A performance guarantee, acceptable to the municipality, is submitted in an amount necessary to cover the completion of the required improvements at an amount for inflation and prorated for the portions of the required improvements already installed.

Notice of the agreement and any conditions shall be on the Final Plan which is recorded at the Registry of Deeds. Release from the agreement shall follow the procedures for release of the performance guarantees contained in Section 10.8.

10.7 Phasing of Development. The Board may approve the plans to develop a major subdivision in separate and distinct phases. This may be accomplished by limiting final approval to those lots abutting that section of the proposed subdivision street which is covered by a performance guarantee. When development is phased, road construction shall commence from an existing public way. Final approval of lots in subsequent phases shall be given only upon satisfactory completion of all requirements pertaining to previous phases.

10.8 Release of Guarantee. Prior to release of any part of the performance guarantee, the Board shall determine to its satisfaction, in part upon the report of the Town Engineer and whatever other agencies and department may be involved, that the proposed improvements meet or exceed the

design and construction requirements for that portion of the improvements for which the release is requested.

10.9 Default. If, upon inspection, the Town Engineer finds that any of the required improvements have not been constructed in accordance with the plans and specifications filed as part of the application, he shall so report in writing to the Code Enforcement Officer, the Municipal Officers, the Board, and the subdivider or builder. The Municipal Officers shall take any steps necessary to preserve the Town's rights.

10.10 Private Roads. Where the subdivision streets are to remain private roads, the following words shall appear on the recorded plan:

"All roads in this subdivision shall remain private roads to be maintained by the developer or the lot owners and shall not be maintained by the Town."

10.11 Improvements Guaranteed. Performance guarantees shall be tendered for all improvements required by Section IX of these regulations, as well as any other improvements required by the Board.

SECTION XI. WAIVERS

11.1 Where the Board makes written findings of fact that there are special circumstances of a particular lot proposed to be subdivided, it may waive portions of the submission requirements or the standards, unless otherwise indicated in the regulations, to permit a more practical and economical development, provided the public health, safety, and welfare are protected, and provided the waivers do not have the effect of nullifying the intent and purpose of the Official Map, the Comprehensive Plan, the Zoning Ordinance, or these regulations.

11.2 Where the Board makes written findings of fact that due to special circumstances of a particular lot proposed to be subdivided, the provision of certain required improvements is not requisite to provide for the public health, safety or welfare, or are inappropriate because of inadequate or lacking connecting facilities adjacent to or in proximity of the proposed subdivision, it may waive the requirements for such improvements, subject to appropriate conditions.

11.3 In granting waivers to any of these regulations in accordance with Section 11.1 and 11.2, the Board shall require such conditions as will assure the objectives of the regulations are met.

11.4 When the Board grants a waiver to any of the requirements of these standards, the Final Plan shall indicate the waivers granted and the date on

which they were granted.

11.5 Whenever the initial approval or any subsequent amendment of a subdivision is based in part on the granting of a variance from any applicable subdivision approval standard, that fact shall be expressly noted on the face of the subdivision plan to be recorded in the Registry of Deeds.

A. In the case of an amendment, if no amended plan is to be recorded, a certificate shall be prepared in recordable form and recorded in the Registry of Deeds. This certificate shall:

1. Indicate the name of the current property owner;
2. Identify the property by reference to the last recorded deed in its chain of title; and
3. Indicate the fact that a variance, including any conditions on the variance, has been granted and the date of the granting.

B. The variance is not valid until recorded as provided in this paragraph. Recording must occur within 90 days of the final subdivision approval or the variance is void.

SECTION XII. APPEALS

An appeal from a decision of the Planning Board regarding interpretation of the Ordinance may be taken to the Municipal Board of Appeals in accordance with Title 30, M.R.S.A., Chapter 213, Section 2411. Appeals on other issues including issue of fact shall be taken directly to the Maine Superior Court pursuant to Rule 80B of the Maine Rules of Court Procedure.

SECTION XIII. SEPARABILITY AND EFFECTIVE DATE

The invalidity of any provision of these standards shall not invalidate any other part.

These standards shall take effect immediately upon adoption.

SECTION XIV. ASSURANCE OF COMPLIANCE

The Planning Board, to assure that the subdivision complies with the Subdivision Ordinance and regulations, any contract outside services, at the subdividers expense. Such services may include, but not be limited to, clerical costs,

consulting engineering fees, architectural fees, attorney fees, recording fees, and appraisal fees.

SECTION XV. CERTIFICATION OF COMPLIANCE

No parcel, lot, or structure shall be conveyed, leased, or occupied, or offered for sale, conveyance, lease or occupancy without certification from the Planning Board that all the terms of the subdivision's approval have been complied with by the subdivider.

ATTEST:

I hereby attest that this is a true copy of the Swan's Island Subdivision Ordinance, duly adopted at a Regular Town Meeting held on March 5, 1990

Gwen J. May
Swan's Island Town Clerk

**Certification of Amendment to the
Subdivision Ordinance for the Town of Swan's Island**

I hereby attest that the following amendments to the Subdivision Ordinance for the Town of Swan's Island have been made:

At a regular Town Meeting held March 6, 2000 the Subdivision Ordinance for the Town of Swan's Island, Maine was amended by adding this paragraph to

Section !!!, Definitions:

"Dormitory – A room or group of rooms designed and equipped for the use as permanent, seasonal or temporary sleeping quarters for three (3) or more persons providing or attending group residential training or educational programs."

And by amending Section !!!, Definitions, Subdivisions, paragraph 4 to read as follows:

"Without limiting the foregoing, the establishment on a tract of or parcel of land of a multi-family dwelling unit, or the division of an existing structure or structures previously used for commercial or industrial use, whether for sale or rent or the establishment on a tract or parcel of land or a lodging unit or a dormitory, shall constitute a subdivision within the above definition."

ATTEST:

Gwen J. May
Swan's Island Town Clerk