PRESERVING THE WORKING WATERFRONT:

EXAMPLES OF COMPREHENSIVE PLANS AND SHORELAND ZONING STANDARDS FROM MAINE TOWNS

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INTRODUCTION

This document presents samples from comprehensive plans from Maine coastal towns that address the working waterfront. It also has sample land use ordinance language. Since every town has its unique needs and conditions, these examples should be considered as general reference material. Towns are urged to consult with their regional council or planning commission for more information.

PART I: THE ROLE OF COMPREHENSIVE PLANS

The comprehensive plan serves as the basis for ordinances, capital investments, and town policies that affect the working waterfront. The primary focus of waterfront needs would be in the Marine Resources chapter. Proposed changes to zoning that affect the working waterfront may also be addressed in the Future Land Use Plan.

The state of Maine reviews local comprehensive plans for consistency with state goals and coastal policies. These include promoting the maintenance, development, and revitalization of the state's ports and harbors for fishing, transportation and recreation and supporting shoreline management that gives preference to water-dependent uses over other uses, that promotes public access to the shoreline and that considers the cumulative effects of development on coastal resources. Plans should determine if traditional water-dependent uses are thriving or are in decline and what will the waterfront look like in 10 years? The adequacy of public access needs to assessed.

SAMPLE COMPREHENSIVE PLAN LANGUAGE

BOOTHBAY HARBOR (Draft Inventory, goals are pending):

According to the Code Enforcement Officer and Planning Board, within the past ten years few conversions of water-dependent uses (and structures) to non-water-dependent and residential (seasonal and year round) uses have occurred. What conversions have taken place have had little effect on marine based activities within the Town.

Recreational, charter and tourist boating activities have expanded during the last ten years, and are likely to continue to do so. In the summer of 2012, small cruise ships (100 to 200 passengers) stopped in Boothbay Harbor twice a week. Currently they are using private facilities and thus future growth may depend upon creating or enhancing public access for these ships. Cruise ships of varying size will likely increase their presence in the region and include Boothbay Harbor as a port of call more frequently. There is agreement that these activities should be balanced to maintain traditional water-dependent uses of the harbor. See the Economy Chapter for more information.

The Boothbay Harbor Land Use Code includes a Maritime/Water Dependent District to protect current working waterfront activities and it encompasses most of the east side of the harbor. "The intention of this land use district is to protect traditional commercial water-dependent uses such as commercial fishing, boat building, marine service and repair, etc., from other competing but incompatible uses; to conserve points of public access to coastal waters; and to give preference in identified areas to commercial water-dependent uses over recreational and residential uses." It is believed that this district and its permitted uses, prohibited uses, and dimensional requirements have effectively served Boothbay Harbor. The Boothbay Harbor Land Use Code regulates water-oriented uses by district to protect the traditional working waterfront.

CRANBERRY ISLES:

1. Inventory

The protection of marine resources is imperative to the community's future and supported by the residents. The town has several ordinances that directly or indirectly address the protection of marine resources. These include the Harbor Management Ordinance, the Shoreland Zoning Ordinance, the Site Plan Review Ordinance, and the Shellfish Ordinance as well as the Subdivision Regulations.

A comprehensive Harbor Management Ordinance was adopted by the town in March 2007. This ordinance contains several articles establishing provisions for the safe and orderly operation of the waters, harbors, wharves, docks, piers, floats, lobster cars, ramps, moorings and mooring spaces. It addresses some of the harbor management issues in anticipation of increased use and demand in the future. How to effectively enforce the provisions of this ordinance poses a challenge and is under debate. The town has two Harbor Masters, one on Great Cranberry and one on Islesford, and a Harbor Committee.

The Shoreland Zoning Ordinance offers protection to water-dependent uses through its Water-Dependent Commercial Residential zone. This zone does not allow uses such as non-marine commercial, institutional, and restaurants. There have been cases where uses have been allowed in this zone that appear inconsistent with its intent. The zoning standards need to be reviewed to assure that their intent is preserved. Marine resources within this zone may be threatened with further development if measures for protection are not more strictly enforced or become more restrictive.

2. Goals and Objectives

Summary of Goals: As an island community, the protection and enhancement of Cranberry Isles marine resources is essential to maintain the community's way of life. This includes practicing responsible environmental stewardship in all town affairs, particularly with regard to marine

resources. The town wishes to manage its marine resources in a manner that ensures that they can be used and enjoyed by all residents and taxpayers while also protected from any threats to their long-term viability. Preservation of the marine environment and fishing community are among the town's top priorities. Actively preserve the working waterfront through the following measures:

a. Review and, if necessary, revise the water-dependent use provisions in the shoreland zoning ordinance to ensure that they are adequate to prevent conversions to other uses;
b. Assess the facility and infrastructure needs of the fishing communities and provide town grant sponsorship for relevant improvement ventures;

GOULDSBORO:

1. Inventory

Public access points include Gouldsboro Point, Prospect Harbor, Bunkers Harbor and South Gouldsboro. There are no public access points at Corea or Birch Harbor. The current public access at Prospect Harbor consists of a strip of land that, according to the harbor master, should not be developed due to its location, road access and limited parking opportunities. There are small, half-tide ramps and parking areas at Bunkers Harbor, South Gouldsboro, Gouldsboro Point and West Bay Stream.

According to the harbor master, more pressure is being put on all public access points each year. Gouldsboro Point and Bunkers Harbor are barely adequate and South Gouldsboro is overcrowded. Parking is barely adequate at all sites and the situation will likely worsen within the next five years. The harbor master foresees the need for dredging and additional piers, floats or other docking facilities. This is an important priority for the town if its fishing community is to survive. The town is presently reviewing options for developing a town pier in Prospect Harbor on land that is privately owned.

There are presently about 150 moorings in the town. There is a "small" waiting list. The harbor master estimates that there will be problems within five years. The town does not currently have any mooring plans. This is something that the town needs to discuss.

2. Goals and Objectives

Water Dependent Uses: Gouldsboro aims to protect its water dependent uses such as boat yards, piers and town landings from incompatible development by retaining current standards for these areas in its shoreland zoning ordinance (see the Future Land Use Plan).

Preservation of the Fishing Community: It is town policy to promote the preservation of commercial fishing in Gouldsboro. The plan recommends that this be accomplished through the following measures:

a. assuring that mooring plans provide adequate space for commercial fishing boats;

b. designing all new docking and parking facilities in accordance with the needs of commercial fishing operations;

c. assuring that any town ordinances that regulate noise, operating hours, odors or other nuisances do not restrict operations that are essential to commercial fishing; and

d. working with regional and state economic development agencies to seek grant funds that support fisheries-based employment ventures.

TREMONT:

1. Inventory

The Tremont land use ordinance has a Commercial Fisheries Maritime Activities district. This district restricts most non-marine uses. For example, the only residential uses allowed are those that are accessory to permitted uses. These standards may need to be reviewed since there are apparent loopholes that have allowed dwellings to be built which are not accessory to marine-related uses.

There are three public access points in town: the Bernard Pier (9,883 square feet) the Bernard ramp and the Seal Cove ramp (5,382 square feet). All three access points also have an associated area of floats. These facilities face several inadequacies. Parking is inadequate, particularly at the Bernard lot and the Bass Harbor Ferry Terminal. There is also severe overcrowding at the wharves.

A related problem is moorings. The current number of moorings is inadequate. The mooring plans were designed for 28 to 32 vessels. The average size of the vessels has increased since the design was developed. This means that the mooring area is now overcrowded. There is presently (early 2009) a waiting list of about 50 boats for moorings.

2. Goals

Preservation of Working Waterfront: The comprehensive plan recognizes that preservation of the working waterfront is essential to preserving the year-round community and the town's marine-based economy. The plan recommends that preservation be supported through the following measures:

a. revising the Commercial Fisheries Maritime Activities (CFMA) zoning provisions to close any apparent "loopholes" that have allowed uses that are not accessory to marine-related uses and to restrict expansion of existing non-conforming uses;

b. assessing the potential of expanding CFMA zoning to additional water-dependent use areas;

c. assuring that any future land use ordinance revisions do not prohibit marine-related operations by overly restricting noises, odors, and related impacts that are clearly part of a working waterfront;

d. assuring that any future mooring plans reflect the needs of commercial fishing operations;

e. promoting the expansion of parking at public access sites;

f. seeking grant opportunities for infrastructure improvements that would create or retain jobs in operations that support commercial fishing. Examples include, but are not limited to, bait and fish storage facilities, boat maintenance operations, and marine railways; and

g. supporting the use of the working waterfront tax breaks for direct fisheries-related uses.

ROCKPORT:

1. Inventory

Rockport Harbor is relatively protected from dangerous east/northeast storms but exposed from the southwest, which is the prevailing wind direction during the fair weather of summer. Therefore, Rockport Harbor is not a particularly comfortable anchorage for visiting yachtsmen. The head of the harbor is physically narrow and confined with relatively little room for docking facilities. Harbor topography is rugged, which restricts the amount of commercial and recreational activity that can be accommodated. Therefore, due to limited space, Rockport's challenge is how to manage a greater demand for its harbor facilities in the future. The harbor is one of several cost centers for the town. Labor costs attributable to the harbormaster and his assistants, capital costs, and maintenance costs account for most the expenses. Mooring fees, winter boat storage fees, and docking fees for three commercial vessels account for approximately 50 percent of harbor-related income, while boat launching and hauling fees, dinghy rental space, and car parking account for the remainder.

It should be noted that Rockport Harbor provides the town with additional income in the form of increased taxes due to increased property value. Additional benefit accrues to the town as a result of employment opportunities at the boatyard on the harbor, other boatyards away from the water yet still in town, commercial lobster fishing, and commercial recreational boat operations that engage in charter sailing and transportation on Penobscot Bay and beyond. Rockport residents support and encourage the continuation and strengthening of the harbor's commercial base. Rockport residents appear comfortable with the existing mix of commercial and recreational uses and seem disinclined to encourage the expansion of town facilities and services to attract larger commercial operations.

The Town of Rockport has a long history of protecting access for commercial fishermen at the Town Landing on the east side of the harbor. Fishermen have two floats exclusively reserved for their use with adequate space for 20 dinghies. The number fluctuates but currently Rockport has about 20 fishermen operating out of the harbor. They appear to have enough space for loading and unloading. Fishermen have priority in the allocation of inner harbor moorings, which is another testament to the town's placing high value on the concept of a working waterfront. It is estimated that between 20,000 and 30,000 visitors are attracted to Marine Park between June and October, and the number is growing. Maine's Office of Tourism expects visitor numbers to the coast will continue to rise steadily over time. Clearly visitors to the harbor spend money in the local economy and benefit Rockport significantly.

There are more than 300 moorings in Rockport Harbor, the majority allocated to private boat owners. The remaining are split between commercial rental moorings and commercial craft. Dinghy space, to provide private boat owners with access to their moored boats, continues to be inadequate to meet demand. Solutions to this problem remain elusive with but 14 floats at Marine Park for the use of yachtsmen. The Marine Park floats can only service 62 recreational dinghies and there is a long waiting list for dinghy space at the town office.

2. Recommendations:

• Evaluate existing water access points as to their capacity and quality of amenities, such as parking. If the evaluation indicates underutilized capacity, a brochure should be developed explaining how citizens and visitors can better use the existing water access points of Rockport. If the evaluation indicates shortcomings, the existing public water access points should be maintained and upgraded.

• Provide access from the recently-acquired Clam Cove overlook to the Clam Cove shore.

• Evaluate the harbor's docking capacity needs as it relates to mooring capacity. Commercial fishermen should continue to receive priority in the inner harbor but other mooring allocation priorities should be better understood and made available to the public.

• Establish a Land for Rockport's Future Fund to take advantage of opportunities to acquire waterfront access and other property needs of the town. These monies could be leveraged by other funds such as monies from the Land for Maine's Future Fund.

PART II: SAMPLE PROVISIONS OF COMMERCIAL FISHERIES MARITIME ACTIVITIES ZONING

INTRODUCTION

Zoning is an important tool in preserving the working waterfront. This document has sample Commercial Fisheries Maritime Activities (CFMA) language from various ordinances adopted by towns along Maine's coast. Before revising your town's zoning, be sure that it is supported by recommendations in your adopted comprehensive plan. Also, have your proposed changes reviewed by the Shoreland Zoning unit of the DEP and an attorney skilled in Maine land use law.

CFMA zoning should have several provisions. First, there needs to be a clearly stated purpose for the standards. This explains the intent of the provision. Second, the planning board needs clear review standards to guide the land use permitting process. This reduces the risk of allowing a use contrary to the purpose of the ordinance.

Given the high demand for shorefront property, applicants for permits in CFMA zones may try to find loopholes in the ordinance language. The strongest ordinances generally do not allow new residential uses. If they are allowed, they are clearly subordinate to the primary uses. For example, a caretaker's apartment might be allowed on the second floor of a boat building operation.

Lot coverage and setback standards are usually different from other zoning districts. For example, a 70 percent lot coverage standard is common. Similarly, setbacks are normally far less than other zones. For example, there are no setbacks in the Islesboro Maritime Activities district. The Freeport provisions have no setbacks from the shore and 15 feet from the other lot lines.

BOOTHBAY HARBOR:

Purpose:

D. Maritime/Water Dependent District. The purpose of the Maritime/Water Dependent District is to reserve a reasonable portion of the Boothbay Harbor waterfront for traditional water-dependent uses. The intention of this land use district is to protect traditional commercial water-dependent uses such as commercial fishing, boat building, marine service and repair, etc., from other competing but incompatible uses; to conserve points of public access to coastal waters; and to give preference in identified areas to commercial water-dependent uses over recreational and residential uses.

Review Criteria:

D. Procedure for administering permits.
(1) Within 45 days of the date of receiving a written application, the Planning Board or Code Enforcement Officer shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete. The Planning Board or the Code Enforcement Officer, as appropriate, shall approve, approve with conditions, or deny all permit applications in writing within 45 days of receiving a completed application.
(2) The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this article.
(3) After the submission of a complete application to the Planning Board, the Board shall approve an application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use:
(a) Will maintain safe and healthful conditions;
(b) Will not result in water pollution, erosion, or sedimentation to surface waters;
(c) Will adequately provide for the disposal of all wastewater;
(d) Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
(e) Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
(f) Will protect archaeological and historic resources as designated in the Comprehensive Plan;
(g) Will not adversely affect existing commercial fishing or maritime activities in a Commercial Fisheries/Maritime Activities District;

Standards:

(d) Maritime/Water Dependent District conversion. The conversion of a dwelling to non-permitted commercial uses shall be prohibited. The conversion of an existing commercial structure to a motel or hotel of any size or to multifamily dwellings shall be prohibited. The conversion of an existing permitted use to a non-permitted use shall be prohibited.

(1) In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources and commercial fishing and maritime activities and other functionally water-dependent uses.

In the Commercial Fisheries/Maritime Activities District there shall be no minimum setback.

In no event shall cleared openings for any purpose, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, 25% of the lot area within the Shoreland Zone or 10,000 square feet, whichever is greater, including land previously cleared. This provision shall not apply to the General Business District or Maritime Activities/Water Dependent District.

Description:

E. Commercial Fisheries/Maritime Activities District. The Commercial Fisheries/Maritime Activities District includes areas where the existing predominant pattern of development is consistent with the allowed uses for this district as indicated in the Table of Land Uses, § 170-101.9, and other areas which are suitable for functionally water-dependent uses, taking into consideration such factors as:

(1) Shelter from prevailing winds and waves;
(2) Slope of the land within 250 feet, horizontal distance, of the shoreline;
(3) Depth of the water within 150 feet, horizontal distance, of the shoreline;

(4) Available support facilities, including utilities and transportation facilities; and
(5) Compatibility with adjacent upland uses.

FREEPORT:

Purpose:

4. Marine Waterfront – The Marine Waterfront District includes areas where the existing predominant pattern of development is functionally water dependent uses. The intent of this district is to recognize and preserve the marine heritage of Freeport and to permit services essential to fishing and boating. There is no minimum lot size, lot frontage, or shore setback requirements in this area, the setback requirements from the front, side, and rear property lines shall be fifteen (15) feet.

VINALHAVEN:

Purpose:

The primary purpose of this district is to provide marine related facilities and services, together with protection of the waterfront in support of commercial fishing and other commercial marine activities. In order to promote the year-round economic viability of the district in the face of the fluctuating and seasonal needs of marine customers, a secondary purpose of the district is to provide commercial activities that serve the general public.

Allowed Uses:

3. Permitted uses are:
a. Marine related facilities, activities, and services.
b. Other commercial activities.
4. Governmental and institutional uses are also permitted in this district.
5. Lodging and other residential uses are prohibited in the district.
6. The use of piers, docks wharves, floats and similar marine structures in the district is limited to commercial fishing and other commercial vessels, except that their use by recreational (non-commercial) boats other than rowboats, punts and dingys is permitted only while obtaining service, supplies, or repairs.

ILSESBORO:

Purpose:

§ 125-28 Maritime Activities District.

The Maritime Activities District includes those area with the Protection Sector of a saltwater body where the existing predominant pattern of development is functionally water dependent, including but not limited to, commercial fishing, ferry services, boat repair yards, yacht clubs, and boat launching and hauling areas. Permitted uses in this district are accessory to the principal water-dependent uses.