

**New Shoreham Town Council Amendments to the Revised General Ordinances
Chapter 19, Utilities, Article VII Wastewater Management
December 14, 2009**

It is ordained by the Town Council of the Town of New Shoreham to Amend Chapter 19, Article VII as follows:

1. AUTHORITY
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3. PURPOSE
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5. WASTEWATER MANAGEMENT PROGRAM BOUNDARIES
6. MISCELLANEOUS REGULATIONS FOR OWTS OPERATION AND SITING
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SECTION 1.0 AUTHORITY

This ordinance has been drafted in accordance with and under the authority of the State of Rhode Island General Laws, Title 45, Chapter 24.5 of the General Laws entitled “Towns and Cities; Wastewater Management Districts”. The authorizing State chapter shall be known and cited as the “Rhode Island Septic System Maintenance Act of 1987”. It authorizes the passage of authorized representatives of the Town, the Sewer Commission or their designees, and licensed septage transporters onto private property for the periodic inspection, pumping, maintenance and repair of Individual Sewage Disposal Systems (ISDSs), now and hereinafter referred to as Onsite Wastewater Treatment Systems (OWTSs).

Nothing in this act replaces or precludes any obligation of the owner to notify the RI Department of Environmental Management (RIDEM), the RI Department of Health, or the Coastal Resources Management Council.

SECTION 2.0 FINDINGS: The provisions of this Ordinance are based upon the following findings.

A. New Shoreham's groundwater and surface water provide important natural and recreational resources, the protection of which is vital to the Island's economic and environmental well-being.

B. In 1984, The United States Environmental Protection Agency (USEPA) designated all of New Shoreham a Sole Source Aquifer (SSA) under the authority of the Safe Drinking Water Act. Certain land uses, and improperly functioning Onsite Wastewater Treatment System (OWTS) poses a threat to the quality and quantity of the Sole Source Aquifer.

C. Block Island's aquifer is integrally connected with surface waters, streams, wetlands, the coastal ponds and the Island's limited potable water supply. Groundwater generally flows towards and discharges to streams and ponds. Damage to any one component of this system could result in damage to another.

D. Location of an OWTS in close proximity to wetlands and waterbodies or in constrained soils such as those with high water tables, seasonal flooding, and excessive or restrictive permeability, negatively affects the ability of an OWTS to treat wastewater.

E. An OWTS, when improperly designed, installed, maintained or located may contaminate surface water and groundwater.

F. Contamination of the aquifer and related surface water poses a serious threat to the health, safety and financial well being of the Town.

G. According to the USGS report 94-4096 as amended, Hydrogeology and Water Resources of Block Island, RI, water conservation and protection on the Island is of vital importance. Availability of fresh drinking water depends on:

1. Number, location, depth and pumping rate of wells;
2. Volume of groundwater discharged to the ocean by the wastewater treatment facility;
3. Volume and distribution of water discharged by an OWTS;
4. Effect of OWTS and other land uses on groundwater and surface water quality.

H. Water treated by the wastewater treatment facility is discharged offshore and is presently unavailable for recharging the Island's water supplies.

I. The Comprehensive Plan states that any capacity expansions of the Town's wastewater treatment facility should be used to support the land use objective of a compact town center. Outside of the town center OWTSs will continue to be the principal means of wastewater management.

J. The Town Comprehensive Plan establishes a water quality protection goal of maintaining existing high water quality for maximum protection of the Island's limited water supplies and vulnerable unique natural habitat.

K. In areas outside of the designated sewer area, OWTS maintenance, repair or replacement of a failing OWTS, water conservation, waste flow reduction measures, use of site appropriate, enhanced on-site wastewater treatment and land use and buffer requirements, all help to make OWTS an efficient and environmentally sound method of wastewater treatment. Enhanced on-site wastewater treatment also results in less site disturbance, a goal of the New Shoreham Comprehensive Plan. Even properly functioning OWTSs, in soils typical of Block Island, remove only an estimated ten (10) to twenty (20) percent of associated nitrogen. Excess nitrates contaminate drinking water and may indicate the presence of other contaminants. In salt water nitrogen results in habitat loss through the destruction eel grass beds and eutrophication. Poorly flushed estuarine coves exacerbate the nitrogen problem.

M. Water Quality Impacts of Changing Land Use on Block Island (URI Cooperative Extension, 1996), assesses potential changes in pollutant inputs given projected growth. This study also demonstrates the beneficial impact of various wastewater management options. It demonstrates that existing water quality can be maintained only if there is enhanced treatment of the OWTS effluent for certain areas of existing and future construction.

N. In recent years, OWTS technology for enhanced treatment of wastewater has progressed rapidly, providing for improved and cost-effective nutrient and pathogen removal. Enhanced treatment is needed to reduce nitrogen in wastewater and to enhance pathogen removal, particularly in high water table areas and areas with either excessively permeable or slowly permeable soils.

O. Innovative dispersal trench options such as shallow, pressurized dispersal trenches into which treated wastewater is discharged provide additional cost-effective opportunities for nutrient and pathogen removal in biologically active near-surface soils and require minimal site disturbance.

SECTION 3.0 PURPOSE

The New Shoreham Town Council hereby finds that Onsite Wastewater Treatment Systems (OWTSs) or septic systems are prone to failure with age, outmoded design, overuse or improper installation, repair and maintenance. OWTS failure poses a risk to public health and a potential contamination source to the surface waters, groundwater and the salt and estuarine waters of New Shoreham. The purpose of this ordinance is to establish a Wastewater Management Program (WMP). Under this program, all OWTS in New Shoreham are to be properly operated, regularly inspected, and routinely maintained to prevent malfunctioning systems and to serve, where appropriate, as an alternative to municipal sewer systems.

When properly designed, used, maintained and installed, OWTS provide a viable and cost—effective alternative to municipal sewers. Furthermore, within groundwater recharge areas, OWTSs help to maintain the hydrological balance by reducing the transport of water out of the recharge area.

This program provides a framework for the efficient inspection, repair and maintenance of septic systems in the Town of New Shoreham. It is the homeowner’s responsibility, however, to ensure that their system is well maintained and properly functioning.

SECTION 4.0 DEFINITIONS Amended 12/07/2005

Any term not defined herein, shall be governed by the definition as it appears in the current Rhode Island Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems.

“Alternative OWTS Component” means any part of an OWTS that does not meet the design or construction requirements as provided by the OWTSs Rules, but has been demonstrated through field testing, calculations and other engineering evaluations to be equal to, or provide the equivalent performance of any part of an OWTS within the OWTSs Rules or to enhance or facilitate treatment, maintenance, longevity or efficiency of an OWTS, and for which a certification from DEM has been issued.

“Alternative Technology” means any OWTS technology for which design parameters are not specified in the OWTSs Rules, but has been demonstrated through field testing, calculations and other engineering evaluations to comply with performance standards consistent with the OWTSs Rules, and for which a certification from DEM has been issued.

“Applicant” means the owner or owners of the property or easement that is the subject of the application, or it must be the person who holds a valid purchase and sales agreement for said property.

“Area Subject to Storm Flowage” means drainage swales and channels which lead into, out of, pass through, or connect other watercourses, and which carry flows resulting from storm events but may remain relatively dry at other times.

“Bedroom” means any room in a residential structure which is greater than seventy (70) square feet in area, which is susceptible to present or future use as a private sleeping area and which satisfies all of the following requirements:

- (1) Has at least one (1) window that meets the four point four (4.4) square foot minimum size and all other requirements of the “Rhode Island State Building Code SBC-1 or SBC-2”;
- (2) Has at least one (1) interior method of entry and egress, excluding closets and bathrooms, allowing the room to be closed off from the remainder of the residence for privacy; and

(3) Is a heated living space that is unrestricted for year-round use. Rooms located below grade that are not recognized as bedrooms by the “Rhode Island State Building Code SBC-1 or SBC-2” are not recognized as bedrooms under these Rules.

“Blackwater” means liquid and solid human body waste and the carriage waters generated through toilet usage.

“Building Renovation” means any addition, replacement, demolition reconstruction and/or modification of an existing structure.

“Building Sewer” means the pipe that begins outside the building foundation wall and extends to the septic tank, the pipe that begins outside the building foundation wall and extends to the grease tank, the pipe from a grease tank to a septic tank, or the pipe carrying laundry wastes directly to a leachfield.

“Cesspool” means any buried chamber, including, but not limited to, any perforated metal tank, perforated concrete vault or covered hollow or excavation, which receives discharges of wastewater from a building sewer for the purpose of collecting solids and discharging liquids to the surrounding soil.

“Change of Use” means any change in use or occupancy of any structure or part thereof which would violate any provision of the Rhode Island State Building Code, R.I. General Laws Chapter 23-27.3, as amended, or any regulation promulgated thereto without first obtaining a certificate of occupancy indicating that the structure complies with the provisions of the state building code for the proposed new use. Change of use shall also be held to mean a conversion of a seasonally used structure to a structure for year-round use.

“Coastal Shoreline Feature” means a part of the shore as categorized by the State of Rhode Island Coastal Resources Management Program using the following categories: coastal beaches; barrier islands and spits; coastal wetlands; coastal headlands, bluffs and cliffs; rocky shores; manmade shorelines; and dunes.

“Contaminant” means any physical, chemical, biological or radiological substance which enters the hydrological cycle through human action and may cause a deleterious effect on ground and/or surface water resources; it shall include but not be limited to hazardous waste, limiting nutrients and sanitary sewage.

“Critical Resource Area” means sensitive land and water resources that provide unique habitat and/or important ecological or economic function(s). Such areas include, but are not necessarily limited to habitat for rare and endangered species, coastal and freshwater wetlands, aquaculture areas, wellhead protection areas, watersheds of surface water reservoirs, and prime agricultural lands.

“Department” or “RIDEM” means the Rhode Island Department of Environmental Management.

“Director” means the Director of the Rhode Island Department of Environmental Management or any subordinate(s) to whom the Director has delegated the powers and duties vested in him/her pursuant to Rhode Island General Laws Chapters 46-12 and 42-17.1, as amended, or any other duly authorized Agent.

“Dispersal Trench” means a shallow ditch with vertical sides, filled with stone, in which a single perforated distribution line or other suitable distribution device is laid and over which a cover of earth is placed.

“Distribution Box” means a watertight compartment that receives effluent and distributes it in approximately equal portions to two (2) or more distribution lines leading to some type of leachfield.

“Distribution Line” means the imperforated and perforated pipe or other suitable distribution device used to disperse effluent that extends from the distribution box.

“Dosing” means the pumped or regulated flow of wastewater.

“Experimental Technology” means any OWTS technology that does not meet the location, design or construction requirements as provided by these Rules, but has been demonstrated in theory to meet the requirements of these Rules and may not be in use in Rhode Island or elsewhere as an approved technology for wastewater treatment.

“Failed OWTS” means any OWTS that does not adequately treat and disperse wastewater so as to create a public or private nuisance or threat to public health or environmental quality, as evidenced by, but not limited to, one or more of the following conditions:

- (1) Failure to accept wastewater into the building sewer;
- (2) Discharge of wastewater to a basement; subsurface drain; stormwater collection, conveyance, or treatment device; or watercourse unless expressly permitted by the Department;
- (3) Wastewater rising to the surface of the ground over or near any part of OWTS or seeping from the absorption area at any change in grade, bank or road cut;
- (4) The invert of the inlet or the invert of the outlet for a septic tank, distribution box, or pump tank is submerged;
- (5) The liquid depth in a cesspool is less than six (6) inches from the inlet pipe invert;
- (6) Pumping of the cesspool or septic tank is required more than two (2) times per year;
- (7) OWTS is shown to have contaminated a drinking water well or watercourse;
- (8) If a septic tank, pump tank, distribution box, or cesspool is pumped and groundwater seeps into it; or
- (9) Any deterioration, damage, or malfunction relating to any OWTS that would preclude adequate treatment and dispersal of wastewater.
- (10) Excessive solids are evident in the distribution box or distribution lines.

“Floodplain” means that land area adjacent to a river or stream or other body of flowing water which is, on the average, likely to be covered with flood waters resulting from a one hundred (100) year frequency storm. A one hundred (100) year frequency storm is one that is to be expected to be equaled or exceeded once in one hundred (100) years; or may be said to have a one percent (1%) probability of being equaled or exceeded in any given year. Rainfall intensity data for a one hundred (100) year frequency storm are those established for New England locations by the National Weather Service.

“Foundation Drain” means any mechanical or gravity drainage system, including all porous media installed to facilitate drainage, that lowers the groundwater elevation beneath a building foundation and which has an outlet for the collected groundwater.

“Freshwater Wetland” is defined as set forth in Rhode Island General Laws Section 2-1-20(4), as amended, and as further defined by the Department's "Rules and Regulations Governing the Administration and Enforcement of the Fresh Water Wetlands Act." The term shall further be held to include those wetland types defined by the remainder of section 2-1-20 and the wetland regulations, including, but not limited to: marshes, swamps, bogs, ponds, rivers, river and stream floodplains and banks, areas subject to flooding or stream water, including rivers and streams, and that area of land within fifty (50) feet of the edge of any bog, marsh, swamp or pond or that area within one hundred (100) feet of a flowing body of water less than ten (10) feet wide or that area within two hundred (200) feet of a flowing body of water greater than ten (10) feet in width.

“Graywater” means wastewater drained from sinks, tubs, showers, dishwashers, clothes washers, and other non-toilet sources.

“Groundwater Table” means the upper surface of the zone of saturation in an unconfined aquifer; includes a perched groundwater table.

“Hazardous Waste” means

- (1) Wastes which include, but are not limited to, those which are toxic, corrosive, flammable, or reactive; or
- (2) Wastes such as are defined under section 3.25 of the RI Department of Environmental Management “Rules and Regulations for Hazardous Waste Generation, Transportation, Treatment, Storage and Disposal”.

“Holding Tank” means a closed watertight structure used to contain wastewater prior to being removed from the premises. A holding tank does not discharge wastewater to the surface of the ground or to the subsurface.

“Human Transported Material” means any materials, other than those emplaced pursuant to the OWTSS Rules, including but not limited to artifacts, organic materials, soil, rock, or sediment moved horizontally by directed human activity.

“Invert” means the lowest portion of the interior of a pipe or fitting.

“Leachfield” means a group of one or more dispersal chambers or trenches designed for the final treatment and dispersal of wastewater into the underlying soil. The leachfield shall be held to mean the horizontal and vertical lines circumscribing the outermost edges including the area between the chambers or trenches and the depth to the bottom of stone.

“Maintenance” means the regular cleaning of any concrete chamber, cesspool, septic tank, building sewer, distribution lines or any other component of an OWTS for the purpose of removing accumulated liquid, scum or sludge. The term, "maintenance," shall also be held to include regularly required servicing or replacement of any related mechanical, electrical, or other component equipment.

“Malfunctioning OWTS” A malfunctioning system shall be synonymous with failed OWTS.

“Nitrogen reducing technology” means a wastewater treatment technology that is accepted by the Department as capable of reducing the total nitrogen concentrations by at least 50% and meeting an effluent concentration of less than or equal to 19 mg/l.

“Onsite Wastewater Treatment System (OWTS)” means any system of piping, tanks, dispersal areas, alternative toilets or other facilities designed to function as a unit to convey, store, treat or disperse wastewater by means other than discharge into a public sewer system.

“Owner” means any person who holds legal title to any real property; or has possession or control of any real property through any agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of a holder of a legal title. Each such person is bound to comply with the provisions of these Rules.

“Person” means any individual, group of individuals, firm, corporation, association, partnership or any federal, state or municipal governmental entity.

“Private Drinking Water Well” means any manmade opening into the ground developed for the purpose of meeting a person's current potable drinking water needs provided said well does not supply a public water system. This definition shall include proposed private drinking water wells on an applicant's property and on other properties with an approved OWTS permit. Wells serving non-potable or non-drinking water needs are not considered private drinking water wells under either this Ordinance or the OWTS Rule. A well on a property that is served by a public water system is not considered a private drinking water well under the OWTSs Rule.

“Public Drinking Water Supply Well” or “Public Well” means any manmade opening into the ground developed for the purpose of meeting all or part of a public water system needs.

“Public Water System” means any water system that provides piped water to the public for human consumption, provided that such system has at least fifteen (15) service connections or

serves an average of twenty-five (25) individuals daily at least sixty (60) days out of the year. A public water system shall include all sources and facilities involved in collecting, treating, storing and distributing the water.

“Pump Tank” means a watertight structure equipped with one or more pumps designed to discharge wastewater intermittently into a leachfield.

“Repair” means any work performed on an OWTS in order to mend or renovate a specific defect or deficiency after the failure, injury, deterioration or partial destruction of a previously existing OWTS or component thereof. A repair shall include any upgrade or modernize of an OWTS (e.g., replacement of cesspool). A repair shall not include any work performed on an existing OWTS that increases the flow capacity of the system.

“Residence” means any structure used for housing purposes, including, but not limited to, single or multiple family dwellings, duplexes, tenements, apartment buildings, residential condominiums, mobile homes, recreational vehicles or trailers.

“Seasonal High Groundwater Table” means the elevation of the groundwater table during that time of the year at which it is highest as determined by direct observation or by interpretation of hydromorphic features in the soil profile.

“Septage” means any solid, liquid or semi-solid removed from septic tanks, cesspools, privies, domestic wastewater holding tanks or other similar onsite wastewater treatment systems.

“Septic Tank” means a watertight receptacle which receives the discharge of wastewater from a building sewer, and is designed and constructed to permit the deposition of settled solids, the digestion of the matter deposited, and the discharge of the liquid portion into the next treatment component or distribution box.

“Septic Tank Effluent Pipe” means the gravity-flow pipe that begins at the outlet of the septic tank or other treatment tank and extends to the next treatment component or distribution box.

“Storm Drain” means any pipe or structure designed to collect, carry and divert surface water runoff.

“Structure” means any residence (as defined herein), building, garage, shack, trailer or other permanent or semi-permanent facility, whether commercial or non-commercial in use, which is proposed to be placed or has been built or otherwise placed on a parcel of real property.

“Subsurface Drains” means any system of below surface piping or highly permeable material intended to lower the groundwater table of an area, and which has an outlet to the surface for the collected groundwater.

“Tributary” means any flowing body of water or watercourse that provides intermittent or perennial flow to down-gradient watercourses that eventually discharge to the waters of concern (e.g., reservoir impoundment or salt pond).

“Tributary Wetland” means freshwater wetlands within a watershed that are connected via a watercourse to the waters of concern (e.g., drinking water supply impoundment or coastal wetland or tidal waters).

“Violation” shall mean, (1) Failure to comply with and adhere to the rules and regulations set forth in this ordinance. (2) The improper discharge of wastewater from a failed OWTS.

“Wastewater” means human or animal excremental liquid or substance, putrescible animal or vegetable matter or garbage and filth, including, but not limited to, water discharged from toilets, bath tubs, showers, laundry tubs, washing machines, sinks, and dishwashers. Both blackwater and graywater are considered wastewater under these Rules.

“Wastewater Management Area (WWMA)” shall constitute the entire town of New Shoreham where the proper operation and maintenance of an OWTS will be required and which is further defined in accordance with the provisions of this ordinance.

“Wastewater Management Inspector” or his/her designee shall mean the town employee whose duty it is to supervise the day-to-day administration of the Wastewater Management Program, the Wastewater Management Office and the provisions Ordinance. The Wastewater Management Inspector or his/her designee shall serve as the enforcement officer pursuant to the authority granted under this Ordinance and any regulations adopted pursuant to this Ordinance.

“Wastewater Management Office (WWMO)” shall constitute the administrative body established by the town of New Shoreham for the day-to-day administration and enforcement of the Wastewater Management Program and the provisions of this ordinance.

“Watercourse” means any river, stream, brook, pond, lake, swamp, marsh, bog, fen, wet meadow, area subject to storm flowage, or any other standing or flowing body of water, including such watercourses that may be affected by the tides.

“Water Supply Protection Program (WSPP)” mean an island—wide program of various zoning and subdivision regulations, ordinances, educational programs and management practices that are designed to protect the integrity of Block Island’s ground and surface water reservoirs.

“Wellhead Protection Area (WPA)” means the critical portion of a three dimensional zone surrounding a public well or well field, through which water will move towards and reach such well or well field as designated by the Director of RIDEM in the RIDEM “Rules and Regulations for Groundwater Quality” or as adopted by the Town.

SECTION 5.0 WASTEWATER MANAGEMENT PROGRAM BOUNDARIES

The Wastewater Management Program (WMP) shall encompass the Town of New Shoreham. Under this ordinance, the Town shall have jurisdiction to ensure the operation and maintenance of all existing and future OWTSs on the Island. When necessary this ordinance authorizes the passage of designated Town officials and licensed/permitted septage transporters onto private property for the periodic inspection, maintenance, pumping and/or repair of OWTSs within the WMP area.

SECTION 6.0 MISCELLANEOUS REGULATIONS FOR OWTS OPERATION AND SITING

6.1 Septage Disposal

Septage or contents pumped from an OWTS shall be discharged at the New Shoreham Wastewater Treatment Facility.

6.2 Septic Tank Additives and Improper Discharges to OWTS

The use of any septic tank additives, not specifically permitted by RIDEM, or the Wastewater Management Office including, but not limited to acids and/or organic chemicals is prohibited. The disposal of hazardous wastes to an OWTS shall also be prohibited. Backwash from a water filtration system into a septic tank is harmful to the operation of the OWTS and is best discharged to a separate infiltration line. There shall be no discharge of rainspouts, basement sumps, floor drains, or any other approved drains to an OWTS.

6.3 Accessibility

To help locate and facilitate the inspection and pumping of a septic tank and ultimately to increase the longevity of the OWTS, all septic tanks installed, repaired or altered after the effective date of this Ordinance, shall be equipped with access risers to grade located at the inlet and outlet ends of the septic tank and an effluent filter located at the outlet end of the septic tank. These access risers shall be a minimum of twenty (20) inches in diameter. These items shall be installed in accordance with specifications available from the Building Official, the Wastewater Management Inspector or their designee and/or the Sewer Commission. The owner shall maintain the OWTS so that it is readily accessible for inspection and maintenance. For new construction, the placement of swimming pools, patios, driveways, or other impervious surfaces over the septic tank is prohibited. Variances for unusual circumstances may be considered.

6.4 Garbage Disposal

Garbage disposals and macerator pumps can reduce the efficient functioning of a septic system. Garbage disposal and macerator pump discharges to an OWTS shall be prohibited.

6.5 Trees and Shrubs

The owner shall keep trees and shrubs at a minimum of ten (10) feet from the leaching area to keep roots from clogging or disturbing the OWTS.

6.6 Water Saving Devices

Water saving devices shall be required on all appropriate fixtures as per the RI State Building Code.

6.7 Location, Setbacks and Alternative OWTS

Location of OWTSs, setbacks from critical resource areas and requirements for alternative OWTSs are governed by section 506 of the New Shoreham Zoning Ordinance. All OWTSs will include Plat and Lot, identification.

6.8 Leachfields

The use of deep concrete chambers (galley), as described in the Rule 34 of the OWTS Rule as a means of treating wastewater effluent shall be prohibited for OWTS Applications for New Building Construction and OWTS Applications for Alterations to a Structure. Deep concrete chambers will not be permitted except for OWTS Applications for Repair when no other type of leachfield can be utilized. The licensed designer must demonstrate that the repair alternatives to a deep concrete chamber are not feasible. (Cross reference OWTS Ordinance Section 505 (D)(4))

6.9 Occupancy and Use

At no time during the year should an OWTS be used by more persons than the system is designed to accommodate.

SECTION 7.0 OWTS INVENTORY AND INSPECTION

This ordinance authorizes the passage of authorized representatives of the Town, the Wastewater Management Office, employees, or their specifically designated agents, and licensed/permitted septage transporters, onto private property when necessary for the periodic inspection, pumping, maintenance and repair of OWTS.

Section 7.1 OWTS Inspections

All OWTSs shall be subject to onsite inspections by the Wastewater Management Office or its designee.

The purpose of OWTS inspections is to assess the condition of the OWTS and provide the Wastewater Management Office with the technical and background information needed to determine the maintenance requirements for each system in the Town of New Shoreham ~~on the~~

island, and/or the need for system upgrade or replacement. The initial inspection to be scheduled will be the first maintenance (baseline) inspection. Subsequent inspections will generally be routine maintenance inspections unless there is a system failure. Maintenance requirements shall be based upon inspection results. Inspections between pumpouts for a particular system may be limited to sludge, liquid and scum measurements. More thorough inspection procedures may be undertaken at, or shortly following, system pumping. After an OWTS has been inspected the owner will receive an inspection report from the Wastewater Management Inspector or his/her designee detailing the findings, including any corrective actions, maintenance requirements, and the timeframe for the next inspection and/or corrective actions.

For compliance with New Shoreham's Zoning Ordinance 506, the inspections will be done by the Wastewater Management Inspector (a town employee), or their designee. The inspector and any designee shall have completed the basic level courses to be accredited through the University of Rhode Island Onsite Wastewater Training or an equivalent training program.

Section 7.2 Inspection Frequency

Inspection frequency and schedule shall be established by the Wastewater Management Office, or its designee, and shall give first priority to areas such as critical resource areas, areas with a history of failure, high seasonal use or frequent pumping. At a minimum All OWTS shall be subject to onsite inspections once every three (3) years, or more frequently as determined by the Wastewater Management Office or its designee. The Wastewater Management Office shall provide the OWTS owner a written notice that the OWTS requires inspection. Inspections must be scheduled by the OWTS owner within 30-days of the date of notice. The notice may require the OWTS owner to provide basic OWTS and site information to the Wastewater Management Office and/or the Wastewater Management inspector. Failure to schedule and/or present a system for inspection shall be deemed a violation of this ordinance.

Section 7.3 Inspection Records

A standard OWTS inspection form shall be developed by the Wastewater Management Office, and the completed inspection form shall be kept on file for each OWTS inspected. The owner of the real property shall provide the Wastewater Management Office, or its designee, with any pertinent information that the owner has regarding the use, age, location, maintenance history, design, plat and lot number, RIDEM and/or CRMC permit number, engineering plans, etc. of the OWTS. The completed inspection form shall contain sufficient information upon which to base the maintenance and/or upgrade requirements for the OWTS. The completed inspection form sent to the owner, the Sewer Commission, and Building Official within 10 (ten) days of inspection. The completed inspection form may report on the following applicable information:

1. Owner's name;
2. Utility pole number, or fire number;
3. Owners' telephone number (if available);

4. Owner's on and off-island contact information(if available);
5. Owner's agent contact information;
6. Person(s) (and title) conducting the inspection
7. Date when each OWTS has been inspected and pumped;
8. Results of the inspection;
9. Date when OWTS is due to be inspected or pumped again;
10. Maintenance requirements for the OWTS;
11. OWTS location (rough sketch, yet accurate representation of location of system, including swing ties from the foundation to the septic tank cover and other critical components of the system);
12. Type of OWTS;
13. Approximate size of septic tank;
14. Physical condition of inlet and outlet baffles, filters, and risers;
15. Presence of garbage disposal device;
16. Septic tank levels;
17. Surface breakout onto the ground surface;
18. Lush plant growth over and near the septic tank or leach field;
19. Odor;
20. Presence of trees or shrubs within 10 feet of the leach field;
21. Presence of impervious areas over the leach field or septic tank;
22. Discharge of septage onto the surface of the ground or into any surface water;
23. Site conditions such as new construction, new living units, in-law apartment and encroachments onto leach field area; and
24. Any recommendations of the inspector to bring the OWTS into compliance with rules and regulations of the Rhode Island Department of Environmental Management, this ordinance, and the requirements for governed by section 506 of the New Shoreham Zoning Ordinance.

The completed inspection form shall be mailed to the address(es) maintained by the Town of New Shoreham's Tax Assessors Office, unless otherwise specified in writing by the owner and/or the owner's agent.

SECTION 8.0 OWTS MAINTENANCE CONTRACT AND SCHEDULES

8.1 Maintenance Schedule

A. The Wastewater Management Office shall determine the OWTS maintenance and pumping requirements for each system based upon the results of the inspections.

Following each inspection of an OWTS by the Wastewater Management Office, or its designated agent, the owner will be given a completed inspection report as described in section 7.3 of this ordinance, indicating the condition and the maintenance and pumping requirements of that particular system. The owner shall arrange such pumping with a licensed/permitted septage

transporters within thirty-days (30) of the stipulated date. Failure to pump within thirty-days (30) of the stipulated date shall be deemed a violation of this ordinance, and may result in the issuance of a notice of violation and/or the OWTS may be pumped at the direction of the Wastewater Management Office pursuant to section 9.1 of this ordinance.

Once pumped, a dated notice of such pumping must be presented to the Wastewater Management Office by the Sewer Commission. This notice shall include the plat, lot and fire number where the OWTS was serviced. Such maintenance and pumping schedules shall supersede any preexisting Town maintenance and/or pumping agreements that may be in effect.

Septic tanks are required to be pumped when the combined depth of sludge and scum layer reaches twenty-five to thirty-three percent (25 – 33%) of the tank's capacity.

B. All systems with pumps and/or electrical components (for example T2 and Alternative OWTSs) are mandated to have a written maintenance contract for those components. Any system with a mechanical component, regardless of age, is mandated to have a mechanical maintenance contract. Only persons accredited to perform OWTS maintenance work, or the manufacturer's representative, shall fulfill the contracted requirements. Maintenance contractors must register with the Wastewater Management Office at Town Hall. A list of approved maintenance contractors is available at the Wastewater Management Office. All maintenance contracts must be registered with the Wastewater Management Office. Failure to comply with any requirement in section 8.1.B shall be deemed a violation of this ordinance, and may result in the issuance of a notice of violation

Section 8.2 Change in Inspection or Maintenance Schedule

The Wastewater Management Office, with due cause and upon written notification to the owner, may change the inspection and/or maintenance requirements and schedule of an OWTS, where such a change is deemed necessary for the proper functioning of the OWTS. This may occur due to circumstances such as changes in household occupancy, seasonal use, rental status, water consumption, system functioning, site characteristics or other significant element of the inspection report.

Likewise, the owner may petition the Wastewater Management Office to alter the inspection and/or maintenance schedule. The owner must demonstrate, through the use of appropriate site data and household information, that such a change in the requirements would still ensure the proper operation of the OWTS and fulfill the intent of this ordinance. Information to be used by an owner in the petition may include OWTS inspection records and site data such as soils, water table, household information, seasonal use, water use, etc.

Section 8.3 Immediate Need to Pump

A. If an inspection reveals that an OWTS needs immediate pumping to avert a potential endangerment to the environment, and/or the public's health and safety, the Wastewater Management Office shall send the Sewer Commission, and the owner, or the owner's agent, a written notice and a copy of the inspection report allowing the owner, or the owner's agent, five (5) days to pump the system and to present evidence of such pumping to the Wastewater Management Office in the form of a receipt from the Sewer Commission.

B. If an inspection reveals that an OWTS presents an imminent endangerment to the environment, and/or the public's health and safety, the Wastewater Management Office shall attempt to contact the owner or the owner's agent to have the system pumped within 12 hours, or less if deemed necessary by Wastewater Management Office or its designee, and to present evidence of such pumping to the Wastewater Management Office in the form of a receipt from the Sewer Commission.

SECTION 9.0 ENFORCEMENT

Section 9.1 Failure to Pump

If proof of system pumping ordered under Sec. 8.1 is not received by the Wastewater Management Office within 30 days of the time frame within which a non—emergency system was to be pumped, or within the 5 days ordered under ~~See~~ section 8.3.A, or within the 12 hours ordered under section 8.3.B, the Wastewater Management Office will hire a licensed/permitted septage transporter to pump the OWTS and the owner will be billed by the Wastewater Management Office. The bill will include the actual cost of pumping as well as associated administrative costs. The owner will be notified in writing of the intended date and time of such pumping, and provided a copy of the inspection report necessitating the pumping, and a brief description of the Wastewater Management Office's efforts to contact the owner or the owner's agent to have the OWTS pumped.

Section 9.2 Failure to Pay Pumping Bill

Failure to pay a bill incurred by the Wastewater Management Office for the pumping of the OWTS may result in a fine and/or a lien on the owner's property by the Sewer Commission. The OWTS owner shall be responsible for all associated administrative and court costs.

Section 9.3 Notice of Violation

If upon inspection any owner of an OWTS is determined to be in violation of these regulations, other than pumping, a written notice of violation shall be issued by the Building Official, the Wastewater Management Inspector or their designee. Notice of violations shall be issued in the following manner:

First Notice of Violation. The first notice of violation shall be sent by the Wastewater Management Office, or its designated agent, to the owner and/or the owner's agent by regular

mail, and by certified mail, return receipt requested. The Wastewater Management Office, or its designated agent, shall complete an affidavit of service by mail, which shall be kept on file. The first notice of violation shall include the following information:

1. A copy of the inspection report containing applicable information specified in section 7.3.A of this ordinance;
2. The nature of the violation, including a reference to the particular sections of the statutes, ordinance, rule, and regulations involved;
3. Required corrective action(s);
4. A reasonable time frame for compliance;
5. The right to request an administrative hearing within 30-days, as provided in section 9.7 of this ordinance and section 1.3 of the Wastewater Management Regulations, and the right to request a hearing and appeal within 30-days as provided in section 9.8 of this ordinance, and section 1.4 of the Wastewater Management Regulations;
6. The possible consequences for noncompliance, including:
 - a. The issuance of a second notice of violation, which may result in the assessment of fines/penalties and/or injunctive relief.

The Wastewater Management Office shall forward a copy of the first notice of violation to the Sewer Commission and Building Official.

Second Notice of Violation. The second notice of violation shall be sent by the Wastewater Management Office, or its designated agent, to the owner and/or the owner's agent by regular mail, and by certified mail, return receipt requested. The Wastewater Management Office, or its designated agent, shall complete an affidavit of service by mail, which shall be kept on file. The second notice of violation shall include the following information:

1. The information and/or documents provided in the first notice of violation;
2. A copy of the first notice of violation;
3. The possible consequences for noncompliance, including:
 - a. Assessment of fines/penalties as prescribed in section 9.6 of this ordinance, and section 2.5 of the Wastewater Management Regulations;
 - b. Injunctive relief as prescribed in section 10.1.i of this ordinance.
4. If applicable, that the violation presents and imminent endangerment to the environment, and/or the public's health and safety, and the Wastewater Management Office Wastewater Management Office may hire a licensed/permitted septage transporter to pump the OWTS, pursuant to section 8.3 of this ordinance.
5. The date, time, and location of the Board of Sewer Commissioners' hearing, whereupon:
 - a. The Sewer Commission shall determine whether to assess fines/penalties, and the amount said fines/penalties associated with the noticed violation(s).

- b. The assessment of fines/penalties shall begin to accrue upon the final decision of the Sewer Commission on the record.

The Wastewater Management Office shall forward a copy of the second notice of violation to the Sewer Commission and Building Official, and record the second notice of violation in the Town's land evidence records.

A hearing or an appeal of a Notice of Violation may be requested by the appellant before the New Shoreham Board of Sewer Commissioners (Sewer Commission), as otherwise provided by law and as further defined in section 9.8 herein.

All Notice of Violations shall be mailed to the address(es) maintained by the Town of New Shoreham's Tax Assessors Office, unless otherwise specified in writing by the owner and/or the owner's agent.

Section 9.4 Failed OWTS

If an inspection and/or pumping record reveals a malfunctioning or failing OWTS, the owner shall be issued a copy of the inspection report, and a notice of violation to repair or replace the system as necessary. A copy of said report and notice of violation shall also be sent to the Building Official, the Wastewater Management Inspector or their designee, the Sewer Commission, and the Department of Environmental Management Division (RIDEM) Office of Water Resources OWTS Program. The owner shall be given thirty (30) days to contact RIDEM and apply for a permit to repair or replace the system as necessary. A copy of the application to RIDEM shall be provided to the Building Official, the Wastewater Management Inspector or their designee. A time limit to complete any needed repairs shall be established on a case-by-case basis. Notification of RIDEM by the Building Official, the Wastewater Management Inspector or their designee does not replace or preclude the obligation of the owner to notify the RIDEM Office of Water Resources OWTS Program.

Section 9.5 Failure to Repair or Replace an OWTS

In the case of a violation, if the OWTS owner fails to accomplish the repairs to or replacement of the OWTS within the time schedule established, the Building Official, the Wastewater Management Inspector or their designee will take appropriate enforcement action, including proceedings for injunctive relief, as prescribed in section 10.1.i of this ordinance. Further, the Building Official will take the enforcement action provided for in the Rhode Island State Building Code.

Section 9.6 Penalties

A. Property owners shall be required to present their system for inspection to the Wastewater Management Inspector within 30 days of the issuance of a written notice for

inspection from the Wastewater Management Office; failure to respond to this requirement will be deemed a violation of the Wastewater Management Ordinance. Property owners shall be required to pump their system within 30 days of the issuance of a written notice to pump from the Wastewater Management office; failure to respond to this requirement will be deemed a violation of the Wastewater Management Ordinance.

B. Any person neglecting or refusing to comply with a Second Notice of Violation issued under the provisions of this ordinance may be fined not more than \$100 (One Hundred Dollars) per violation per day of outstanding violation. Each day of continuing violation shall constitute a separate and distinct violation. Fines issued under this ordinance shall not exceed \$500 (Five Hundred Dollars) per violations by the Sewer Commission after hearing thereon. Each day of a continuing violation may be construed to constitute a separate and distinct violation. All fees/fines shall be returned to the Wastewater Management Office for the administration and implementation of the Wastewater Management Program.

Before the assessment of any fine/penalty or fee, the New Shoreham Board of Sewer Commissioners (Sewer Commission) shall schedule a hearing to determine whether to assess fines, and the amount fine to be assessed. Notice of the hearing shall be mailed to the violator at least ten (10) days prior to the date set. All notifications shall be mailed to the address(es) maintained by the Town of New Shorehams' Tax Assessors Office, unless otherwise specified in writing by the violator and/or his/her agent.

Section 9.7 Administrative Meeting

Any owner of an OWTS who is aggrieved by any action or finding of the Wastewater Management Office, or its designee, shall have the right to an administrative meeting before the Wastewater Management Inspector, or his/her designee. An administrative meeting shall be convened within 30 days following the request or earlier whenever possible. Persons are encouraged to resolve issues on the administrative level before requesting hearing before the New Shoreham Board of Sewer Commissioners.

Section 9.8 Hearing

(1) Any owner of an OWTS who is cited for a violation of this ordinance shall have the right to a hearing before a quorum of the Sewer Commission. A request for such a hearing must be made within thirty (30) days of receipt of the Notice of Violation or written notice, and shall be filed with the Wastewater Management Office, which shall be forwarded forthwith to the Sewer Commission.

a. Upon receipt of an appeal, the Sewer Commission shall require the Wastewater Management Office to transmit forthwith to the Sewer Commission all papers, documents and plans, or a certified copy thereof, constituting the record of the action which is being appealed.

b. An appeal shall stay all proceedings in furtherance of the action being appealed. Under no circumstances, however, shall an OWTS that presents an imminent endangerment to

the environment, and/or the public's health and safety be allowed to continue to do so during the appeal process.

(2) The Sewer Commission shall schedule a hearing on such an appeal within thirty (30) days of receipt of the notice of appeal. Notice of the hearing shall be sent to the appellant at least ten (10) days prior to the date set. The notice shall include:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes, ordinance, rule, and regulations involved;
- d. A short and plain statement of the matters asserted. If the Sewer Commission is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved and a detailed statement shall be furnished.

(3) A quorum of the Commission is necessary to hear and decide any such appeal. A quorum is hereby defined as three commissioners.

(4) At the hearing, the appellant and any other interested party shall be permitted to present evidence and argument on all issues involved.

(5) The Sewer Commission shall cause minutes to be kept of each hearing, and shall provide for an audio recording of each hearing. Hearings may be stenographically recorded at the request of any party, provided that said party pays for the stenographer and the transcript.

(6) The record of a contested case shall include:

- a. All pleadings, motions and intermediate rulings;
- b. Evidence received or considered;
- c. Statement of matters officially noticed;
- d. Questions and offers of proof and rulings thereon;
- e. Proposed findings and exceptions;
- f. Any decision, opinion or report by an officer and/or commissioner presiding at the hearing; and
- g. All Wastewater Management Office's memoranda or data submitted to the Sewer Commission Board in connection with the case.

(7) Any final order and/or decision adverse to a party in a contested case shall be stated on the record at the conclusion of the hearing, or shall be in writing, and shall be rendered no more than forty-five (45) days after the hearing is closed. Any final order and/or decision shall include findings of fact and conclusions of law, separately stated. The party shall be notified by mail of any order along with all attorneys of record. All notifications shall be mailed to the

address(es) maintained by the Town of New Shoreham's Tax Assessors Office, unless otherwise specified in writing by the party and/or attorneys of record.

(8) The Building Official, the Wastewater Management Office and its Inspector and/or designee, or an employee and/or staff of the Sewer Commission, shall not communicate with any member of the Sewer Commission regarding any issue of law of any contested matter except upon notice and opportunity for all parties to participate, but members of the Sewer Commission may communicate with each other and may have the aid and advice of one or more personal assistants.

(9) Pursuant to the provisions of RIGL § 45-24.5-4, an aggrieved party shall have the right to appeal the final order and/or decision of the Sewer Commission to the District Court in the manner set forth under the provisions of the Rhode Island Administrative Procedure Act, RIGL § 42-35-15.

SECTION 10.0 ADMINISTRATION

The Tax Collector shall be responsible for collecting fees and fines from residences, businesses and other properties regulated under this ordinance. The Director of Public Work, or the Town Manager's designee, shall be responsible for the overall administration of the Wastewater Management Program and the Wastewater Management Office, and the Building Official, Wastewater Management Inspector or their designee shall serve as the enforcement agent. The Conservation Commission shall provide assistance to the Wastewater Management Office in the development of an associated educational program. The Director of Public Work shall develop the qualification requirements of the Wastewater Management Inspector or its designee who is in charge of the day-to-day operation of the Wastewater Management Program and the Wastewater Management Office. At a minimum, the Wastewater Management Inspector, or his/her designee shall have completed the basic level courses to be accredited through the University of Rhode Island Onsite Wastewater Training or an equivalent training program.

Section 10.1 Power and Duties of Sewer Commission under this Ordinance

(1) Meetings of the Sewer Commission shall be held at the call of the chair or vice-chair or by the vote of a majority of its members. The chair or, in the absence of the chair, the acting chair shall be empowered to administer oaths and compel the attendance of witnesses.

(2) It shall be the duty of the Sewer Commission, without limitation, to:

- a. Develop rules and regulations for the implementation of this ordinance for review and approval by the Town Council.
 1. Prior to the adoption, amendment or repeal of the rule or regulation, the Sewer Commission shall:
 - i. Give at least 20 days' notice of its intended action. The notice shall include a statement of either the terms or substance of the intended

action or a description of the subjects and issues involved, and of the time when, the place where, and manner in which interested persons may present their view thereon. The notice shall be published in a newspaper, newspapers, or other publications having general circulation throughout the Town. Copies of proposed rules shall be available at the Sewer Commission and by mail to any member of the public upon request.

- ii. Afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. Opportunity for oral hearing must be granted if requested by 25 persons or by a governmental subdivision of the Town. The Sewer Commission shall consider fully all written and oral submissions respecting the proposed rule or regulation.
2. Upon adoption of a rule or regulation, the Sewer Commission, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein the Sewer Commission's reasons for overruling the consideration urged against its adoption.
- b. The Sewer Commission shall establish such rules and regulations for the conduct of its own proceedings for the implementation of this ordinance, for examining permits, review of compliance rules and regulations of this ordinance, hearings, investigations, assessment of penalties, fines and levies, and as may otherwise be necessary and proper for the implementation of this ordinance and which are consistent with the laws of the State of Rhode Island, of the United States of America and the Charter of the Town.
 - c. Render declaratory rulings regarding the rights and obligations of any person or owner of property that is subject to the requirements of this ordinance.
 - d. Hear and decide appeals from any violation notice issued pursuant to this ordinance.
 - e. Levy fines, after a hearing, for violations pursuant to this ordinance.
 1. Any such fines shall not be greater than \$100 (One Hundred Dollars) per violation per day of outstanding violation. Each day of continuing violation shall constitute a separate and distinct violation. Fines issued under this ordinance shall not exceed \$500 (Five Hundred Dollars) per day for violations.
 2. Before the assessment of any fine/penalty or fee, the Sewer Commission shall provide for a hearing. Further, this ordinance and its regulations shall provide that any person aggrieved by the final decision of the Sewer Commission in assessing a fine/penalty or fee, ordering compliance or other action shall have the rights of appeal pursuant to Rhode Island General Laws, Administrative Procedures Act, Chapter 35 of Title 42 and to the district court.

- f. Contract for services with independent licensed/permitted septage transporters, licensed OWTS installers and others as necessary. All seprage transporters must be licensed by the RI Department of Environmental Management and registered with the Sewer Commission.
- g. Provide for the passage of authorized persons onto private property when necessary for periodic investigations and inspections of OWTS.
- h. Order the maintenance of OWTSs based upon inspection results.
- i. In the event that a property owner fails to repair or replace a failing OWTS within the time frame specified in the Notice of Violation, and after hearing thereon, the Sewer Commission is empowered to seek an order from the Superior Court for the County of Washington to enjoin the property owner from interfering with the efforts of the Sewer Commission and/or the Wastewater Management Office to effectuate the repairs or the replacement of the OWTS on the property. In addition, the Sewer Commission shall be empowered to assess all the costs incurred in enforcing this ordinance, its regulations, orders and directives, together with all the costs specifically of repairing or replacing the OWTS as a fine/penalty and may attach the property to enforce the payment of such fine/penalty.

SECTION 11.0 FINANCING

The Town and/or Sewer Commission shall have the authority to raise funds for the administration, operation, contractual obligations, and services of the Wastewater Management Program.

Section 11.1 Grant And Loan Program

The Town under the authority of the State Legislature shall have the authority to issue bonds or notes or to receive grants for the purpose of establishing a revolving fund to make low interest loans or grants available to qualified property owners for the improvement, correction, or replacement of a failed OWTS. The Town and/or Sewer Commission shall establish specific criteria to define eligibility for grants or loans. A public hearing shall be held prior to implementing the grant and loan program.

12.0 EDUCATION

A public education program shall be established and overseen by the Conservation Commission, with technical assistance from the Wastewater Management Office and other appropriate sources, to inform people about the benefits and goals of the Wastewater Management Program and the entire Water Supply Protection Program (WSPP). The educational program shall include, but not be limited to the following:

- (1) Proper operation and maintenance of OWTS;
- (2) Proper disposal of hazardous waste, including household hazardous waste
- (3) Water conservation and the development of a water conservation program
- (4) Operation and management framework of the Wastewater Management Program and WSPP
- (5) Protection of Critical Resource Areas
- (6) Use of environmentally—sensitive cleaning products

SECTION 13.0 SEVERABILITY

If any provision of this ordinance or any rule or determination made hereunder, or application hereof to any person, agency, or circumstances is held invalid by a court of competent jurisdiction, the remainder of this ordinance and its application to any person, agency, or circumstance shall not be affected thereby. The invalidity of any section or sections of this ordinance shall not affect the validity of the remainder of this ordinance.

Attest: Fiona Fitzpatrick
 Town Clerk

Proposed Amendment Posted: November 16, 2009
Hearing Date: December 7, 2009
Date Approved: December 7, 2009
Date Effective: December 14, 2009
Revised Ordinance Posted: December 10-20, 2009