

APPENDIX C

HARBOR PROTECTION OVERLAY DISTRICT

**§ 153-3-70 through -75 of East Hampton Town Code
and related provisions**

PUBLIC HEARINGS HAVING BEEN HELD by the Town Board of the Town of East Hampton on January 6, 1995 and August 18, 1995, regarding a Local Law amending Chapter 153 ("Zoning") of the East Hampton Town Code to establish a zoning overlay district to be known as the Harbor Protection Overlay District, to establish regulations for the same, to amend Article XII of Chapter 153 (the Use District [Zoning] Map) to depict the boundaries of the said Harbor Protection Overlay District, and to make certain related amendments to Chapter 153, as more fully set forth in the text of the Local Law, said Local Law is hereby enacted to read as follows:

NOTICE OF ENACTMENT

PLEASE TAKE NOTICE that after a public hearing held pursuant to the requirements of law on January 6, 1995 and August 18, 1995 and at a meeting held by the Town board of the Town of East Hampton, New York on October 6 1995, the following Local Law was adopted:

LOCAL LAW NO. 12 OF 1995

INTRODUCTORY NO. 14 OF 1994

A Local Law providing for the amendment of Chapter 153 ("Zoning") of the East Hampton Town Code to establish a zoning overlay district to be known as the Harbor Protection Overlay District, to establish regulations for the same, to amend Article XII of Chapter 153 (the Use District [Zoning] Map) to depict the boundaries of the said Harbor Protection Overlay District, and to make certain related amendments to Chapter 153 as more fully set forth herein.

BE IT ENACTED by the Town Board of the Town of East Hampton as follows:

SECTION I. - FINDINGS AND OBJECTIVES:

The Town Board finds that the purity and productivity of East Hampton's harbors, bays, creeks, and ponds are essential to the Town's quality of life and to the continued well-being of the Town's citizens.

The Town's surface waters are an important recreational asset for the Town's residents and visitors, whose purity and biological productivity is a mainstay of East Hampton's resort-based economy. The Town's waters support a valuable commercial and recreational finfish and shellfish industry which has regional, State, and national significance. In addition, the State has included many of the Town's surface waters in its list of significant coastal fish and wildlife habitats.

The quality of the Town's surface waters, however, has deteriorated in the face of continued growth and impacts from construction, stormwater runoff associated with shoreside development, septic intrusion from residences and businesses, and other man-made causes. Large shellfishing areas have been closed due to pollution in the past decade.

East Hampton's current regulations do not provide sufficient protection to the Town's waterways. The prevention of water pollution, marine habitat degradation, and visual deterioration is wiser and less costly than attempting to alleviate these problems after they occur. Those who live on or near the Town's harbors and other surface waters derive many benefits from the proximity of these waterways, and they have a special responsibility to help protect them. Accordingly, the Town Board finds that the enactment of this Local Law is in the best interests of the Town and its citizens.

SECTION II. - TOWN CODE AMENDED:

Chapter 153 ("Zoning") of the East Hampton Town Code is hereby amended in part to read as follows:

§ 153-1-20. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

CATCHMENT BASIN - *A belowground structure for the receipt and recharge of stormwater runoff.*

DRIVEWAY or PRIVATE DRIVEWAY - *A way for vehicular ingress and/or egress from a street to a lot, whether or not surfaced or improved.*

FLAG LOT - *A type of lot (commonly "flag-shaped" in configuration) in which street frontage is provided by a strip of land which is narrow in relation to the remainder of the lot and which extends from the main body of the lot to the street. A lot which does not physically front on or abut a street, but which has access to a street by means of an easement over other property, shall be deemed to be included in this definition.*

FLAG STRIP, FLAG ACCESS STRIP or PANHANDLE - *The part of a flag lot which provides physical access from the lot to a street and which is narrow in relation to the rest of the lot.*

§ 153-3-10. Overlay districts established.

For the purpose of applying additional uniform land use regulations to specific categories of land sharing certain important characteristics, there are hereby established the following overlay districts:

A. Affordable Housing Overlay District (AHO)

B. Agricultural Overlay District (AGO)

C. Flood Hazard Overlay District (FHO)

D. Limited Business Overlay District (LBO)

E. Water Recharge Overlay District (WRO)

F. Harbor Protection Overlay District (HPO)

§ 153-3-70. Harbor Protection Overlay District.

§ 153-3-71. Purpose.

The purpose of the Harbor Protection Overlay District is to maintain or improve surface water quality in East Hampton's major harbors, creeks, and ponds, including Accabonac Creek, Fort Pond (including the arm of Fort Pond north of Industrial Road), Georgica Pond, Great Pond (Lake Montauk), Hog Creek, Napeague Harbor, Northwest Creek, Northwest Harbor, Steppingstones Pond, Three Mile Harbor, Tuthill Pond, and Wainscott Pond. The district is also intended to maintain or improve wildlife habitat in these areas, and to maintain or restore these waterways as closely as possible to their natural condition, so that the Town's citizens and visitors can continue to enjoy and appreciate their natural values.

The Harbor Protection Overlay District will help prevent the entry of stormwater runoff into the Town's waters; gradually require the upgrading of out-moded or inoperable septic systems; preserve important indigenous vegetation; reduce impacts from residential and commercial swimming pools; and upgrade standards for fuel storage tanks.

East Hampton's waterways are among the Town's most prized features. They

support bountiful shellfish and finfish resources, offer prime habitat for local wildlife, offer residents and visitors a place to swim, fish, hunt, boat, observe wildlife, and enjoy scenic beauty and tranquility. The overlay district will help preserve these important benefits for future generations.

§ 153-3-73. Boundaries.

The boundaries of the Harbor Protection Overlay District shall be as shown on the Use District Map. The same may be amended from time to time by local law.

§ 153-3-75. Regulations.

In addition to any other provisions of this chapter which may apply to them, lots, lands, buildings, structures, uses, and activities within the Harbor Protection Overlay District shall be subject to the following restrictions and regulations:

A. Control of stormwater runoff. The following regulations shall apply to structures or activities which produce or contribute to stormwater pollution of the Town's surface waters:

(1) No parking lot or private driveway shall hereafter be constructed unless it has either an unimproved surface (e.g., dirt, crushed shells) or an improved surface consisting of one or more of the following materials: poured concrete, hot plant mix asphalt, rapid-curing cut-back asphalt, or quartz gravel.

(2) No road, private driveway, or parking lot with an improved surface shall hereafter be constructed unless all stormwater generated by the said structure is directed into one or more catchment basins. The said catchment basin or basins shall have a combined volume (in cubic feet) equal to the surface area of the road, driveway, and/or parking area (in square feet), divided by six (6).

(3) Any road, private driveway, or parking lot which is hereafter constructed with an improved surface shall be maintained so that all stormwater generated by the said structure is actually directed into the catchment basin or basins required by the preceding paragraph. Any catchment basin required by the preceding paragraph shall be kept clean and maintained so that it recharges stormwater into the ground without overflowing.

(4) No pipe, culvert, drain, or similar conduit may hereafter be constructed or installed which discharges stormwater into wetlands (including surface waters).

(5) Every principal building or addition to a principal building which is hereafter constructed or erected shall be furnished with gutters and leaders to direct stormwater from roofs into one or more catchment basins. The said catchment basin or basins shall have a combined volume (in cubic feet) equal to the surface area of the roof (in square feet), divided by six (6).

(6) During construction work the disturbance of natural vegetation and land contours shall be minimized to the maximum extent practicable. Project-limiting fencing, siltation mesh, strawbales, or similar devices for limiting land disturbance and retarding erosion and siltation shall be used during construction work and during any land clearing or grading in preparation for or associated with construction work.

B. New sanitary septic systems. The following regulations shall govern the installation of all septic systems after this date, except for septic systems which are installed to replace legally preexisting septic systems:

(1) No such septic system shall be installed or constructed unless it is set back a minimum of two hundred (200) feet from the surface waters of Accabonac Creek, Fort Pond (including the arm of Fort Pond north of Industrial Road), Georgica Pond, Great Pond (Lake Montauk), Hog Creek, Napeague Harbor, Northwest Creek, Northwest Harbor, Steppingstones Pond, Three Mile Harbor, Tuthill Pond, and/or Wainscott Pond and from the upland boundary of any wetlands contiguous to the foregoing bodies of water. To the extent that any provision of Article IV imposes a lesser wetland setback for septic systems, the requirements of this paragraph shall be controlling with respect to lands within the Harbor Protection Overlay District.

(2) No septic system leaching pool shall hereafter be installed unless the bottom of the leaching pool is situated a minimum of four (4) feet above the groundwater table.

C. Existing sanitary septic systems. Any septic system which legally exists on a residential property on January 1, 1996 shall be replaced or upgraded in the following circumstances and to the following extent:

(1) Every septic system regulated by this subsection shall be replaced or upgraded if:

(a) A natural resources special permit is required for work to be performed on the lot or parcel containing the septic system; and

(b) The work to be performed will increase the habitable floor area of a principal building on the lot, or will increase the number of bathrooms within a building on the lot; and

(c) The septic system in question does not meet the minimum requirements of the Suffolk County Department of Health Services for vertical separation to groundwater, for setback to surface waters, or for septic system capacity, or in that it lacks a septic tank.

(2) Where this subsection requires that an existing septic system be replaced or upgraded, the new or upgraded septic system shall meet the following requirements:

(a) It shall comply with the requirements of the Suffolk County Department of Health Services for new septic systems and shall be installed under the supervision of the Sanitation Inspector; and

(b) It shall be set back a minimum of one hundred fifty (150) feet from the upland boundary of all tidal wetlands (including tidal surface waters) or, if that is not feasible, it shall be set back the maximum practicable distance from the surface waters of Accabonac Creek, Fort Pond (including the arm of Fort Pond north of Industrial Road), Georgica Pond, Great Pond (Lake Montauk), Hog Creek, Napeague Harbor, Northwest Creek, Northwest Harbor, Steppingstones

Pond, Three Mile Harbor, Tuthill Pond, and/or Wainscott Pond and from the upland boundary of any wetlands contiguous to the foregoing bodies of water, taking into consideration such factors as the physical constraints of the site and the location of nearby water supply wells.

D.Limited clearing of lots. Clearing of lots or parcels of land within the Harbor Protection Overlay District shall be restricted as set forth herein.

(1)The total area of a lot which may be cleared of indigenous natural vegetation shall not exceed the following amounts for any lot located wholly or partly within the overlay district:

Lot Area (square feet)	Maximum Clearing Permitted
<u>In Residence Districts:</u>	
Up to and including 39,999	10,000 square feet or 35% of lot area, whichever is greater
From 40,000 to and including 280,000	10,000 square feet + (lot area X 12.5%)
Greater than 280,000	45,000 square feet

In Commercial Districts:

All lots	10,000 square feet or 50% of lot area, whichever is greater
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In calculating the amount of clearing permitted on a flag lot by this subsection, the area of any flag strip shall be excluded from lot area. Likewise, any clearing for driveway purposes within the flag strip shall not be counted into the permissible amount of clearing.

(2)Clearing in excess of forty-five thousand (45,000) square feet on any lot in a residence district is prohibited unless the following requirements are met:

- (a)The area of the lot, excluding the area of any flag strip but otherwise determined as set forth in § 153-1-20 hereof, exceeds three hundred thousand (300,000) square feet; and**
- (b)Site plan approval and a special permit have been first obtained from the Planning Board.**

E.Swimming pools. The following regulations shall govern the construction or installation of swimming pools:

(1)No swimming pool shall hereafter be constructed or installed unless it is furnished with a system to reduce the use of chlorine disinfectant, such as an ozonator, ionizer, or ultra violet disinfectant system.

(2)No swimming pool shall hereafter be constructed or installed unless the bottom

of the swimming pool is situated a minimum of two (2) feet above the groundwater table. The Building Inspector shall require proof of compliance with this provision before issuing a Certificate of Occupancy.

(3)No swimming pool shall hereafter be constructed or installed unless it is provided with one or more dry wells which are easily accessible for the evacuation of water from the swimming pool. In the case of a gunite or other evacuable swimming pool, such dry wells shall have a total volume at least equal to ten percent (10%) of the volume of the pool, and in any case not less than four hundred fifty (450) gallons (or approximately the volume of a three (3) foot deep by five (5) foot wide dry well). In the case of a vinyl-lined swimming pool, the total volume of dry wells shall be at least equal to one-half (1/2) the dry well volume required for a gunite pool of the same size.

(4)No swimming pool shall be drained or have its water discharged into a driveway, storm drain, public or private street, or into wetlands (including surface waters), nor shall any swimming pool be drained or have its water discharged into any receptacle other than a dry well installed as required by this subsection.

(5)The cleaning of swimming pools or swimming pool surfaces by means of an acid wash is prohibited unless the acids used are completely neutralized before discharge from the swimming pool.

F.Fuel storage tanks. On lots having one (1) or more fuel storage tanks, whose combined capacity does not exceed one thousand one hundred (1,100) gallons, the installation of each fuel storage tank shall hereafter be subject to the following requirements and restrictions:

(1)If installed belowground, each tank shall be of double-walled fiberglass manufacture.

(2)If installed aboveground, each tank shall either:

(a)be installed within the cellar of a building having a poured-concrete floor, or

(b)be installed atop an impermeable flat surface, e.g., a concrete pad, which extends at least six (6) inches laterally beyond the outermost sides of the tank and any associated piping, and be installed so that it is open and accessible for inspection on at least three (3) sides.

§ 153-3-79. Surveys and other information.

In order to ensure compliance with the regulations of the Harbor Protection Overlay District, every application for a building permit to construct or erect a building or structure within the said district shall be accompanied by a survey which has been prepared by a licensed surveyor and which depicts the following:

A.Clearing. The areas of the lot which are proposed to be cleared, and a calculation of the percentage of lot area which will be cleared including all portions of the lot previously cleared.

B.Depth to groundwater. For projects involving the installation of septic system discharge devices or swimming pools, or which require the installation of catchment basins, the mean depth to groundwater in the areas

proposed for any septic system, swimming pool, or catchment basin.

§ 153-4-37. Relief provision.

A. Principal buildings on small lots. In certain limited cases the local agency issuing a natural resources special permit shall have authority to approve, by natural resources special permit, lesser bluff or wetland setbacks than are required by §§ 153-4-32 or 153-4-34 hereof and lesser wetland setbacks or depths to groundwater than are required by subsections B and C of § 153-3-75 hereof. The dimensional relief authorized by this section may be employed only for one (1) principal building or additions thereto, together with necessary wastewater disposal facilities, and only in the following instances:

(1) The standards for issuance of a natural resources special permit are met; and

(2) In the determination of the local agency, the dimensional requirements of the above-cited Code provisions cannot be met because the following factors apply:

(a) The applicable setback requirements cannot be met because of the small size of the lot or the existing location of improvements on the property, even if reductions are made in the size of the principal building or additions or if reasonable reductions are made in yard setbacks; or

(b) For septic systems, the depth to groundwater or setback requirements cannot be met because the small size of the lot, the existing location of improvements, the elevation of the property or the location of nearby water supply wells makes siting a conforming septic system on the property impracticable.

B....

C....

§ 153-5-50. Specific standards and safeguards.

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EXCESS CLEARING IN HARBOR PROTECTION OVERLAY DISTRICT

(1) Lot area, exclusive of any flag strip, must exceed three hundred thousand (300,000) square feet.

(2) No greater than fifteen percent (15%) of the lot area may be cleared, with clearing to be calculated as set forth in Subsection E of § 153-3-65 hereof.

(3) The location, amount, and nature of the proposed clearing shall not have the following adverse effects:

(a) Endangerment of the Town's groundwater or of wetlands (including surface waters) adjacent to or downgradient of the proposed clearing;

(b) Destruction of vegetative buffers adjacent to wetlands (including surface waters) or degradation of important wildlife habitat;

(c) Destruction of vegetation which is rare or unusual in the Town; or

(d) Despoliation of publicly important views or buffers, such as areas which are

visible from natural bodies of water or public streets or which border protected natural lands.

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NATURAL RESOURCES SPECIAL PERMIT:

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(9)No Natural Resources Special Permit which is required for projects or activities in tidal waters shall allow the use of wood which has been treated with copper chromated arsenate (CCA), ammoniacal copper quat (ACQ), or creosote unless it can be shown that no reasonable alternative material will serve the purpose for which the CCA-, ACQ-, or creosote-treated wood is intended to be used. In determining whether no reasonable alternative to the proposed wood exists, the Board of Appeals shall take into account the cost of alternative materials, their suitability for the intended use (e.g., structural stability), and any environmental benefit to using alternative materials.

(10)For structures, lands, or uses located within the Harbor Protection Overlay District, the disturbance of natural vegetation and topography during construction activities shall be minimized to the greatest degree practicable. To this end, project-limiting fencing, siltation mesh, strawbales, or similar devices for controlling land disturbances and retarding erosion and siltation shall be required during construction, and during any clearing or grading of land preparatory to or associated with construction activities.

Article XII. Use District (Zoning) Maps.

[See attached maps.]

SECTION III. - EFFECTIVE DATE:

This Local Law shall take effect immediately upon filing with the Secretary of State as provided by law.

DATED:

**BY ORDER OF THE TOWN BOARD
TOWN OF EAST HAMPTON, NEW YORK**

**FREDERICK W. YARDLEY
TOWN CLERK**