**Proposed BYLAWS OF the Long Pond Overlook Homeowners Road Association**

ARTICLE I

**Name**

The name of the association is the Long Pond Overlook Homeowners Road Association (hereinafter ‘the Association’) which is organized as a statutory road association pursuant to Title 23, Maine Revised Statutes, Sections 3101 to 3104.

ARTICLE II

**Purpose**

The purpose for which the Association is organized is for the repairing and maintaining of the roads and storm water control facilities of the private ways shown on the Subdivision Plan as recorded as Plan P971, Book 549, Page 57 in the Franklin County Registry of Deeds and located in Sandy River Plantation, Maine.

ARTICLE III

**Board of Directors and Officers**

The affairs of the Association shall be managed by a Board elected at the Annual Association meeting. Members shall elect a President, Vice President, Secretary, Treasurer and a Road Commissioner, for a two-year term, with the exception of the Treasurer, whose term will be for four years, provided that the incumbent Treasurer is able and agrees. Said Board shall serve as the Board between Membership meetings. The Board shall act on such matters as delegated by the Members, and as authorized by Title 23, M.R.S.A., Sections 3101 to 3104 and the duties of the officers as prescribed by these bylaws. Vacancies shall be filled, if for greater than five (5) months, by vote of the Members at the next annual meeting; if for less than five (5) months, by vote of the remaining Board. The Association shall have a year-to-year existence, until revoked by a majority vote of the membership.

Section 1. Board. The Board of the Association shall be a President, Vice President, Secretary, Treasurer and Road Commissioner. They shall take office immediately after the adjournment of the meeting at which they are elected.

Section 2. The President. The President shall be the chief executive officer of the Association and shall perform such other duties as from time-to-time may be assigned to him by the members. The President shall be ex officio a Member of all committees. The President shall be Moderator of all membership meetings.

Section 3. The Vice President. The Vice President shall serve as President when the President is unable or unwilling to serve and/or perform the duties of President.

Section 4. The Secretary and Treasurer. The Secretary shall keep the minutes of the Annual meeting of the Members and any Officers' meetings. The Treasurer shall have the custody of the receipts, bank records, disbursements, funds and securities of the Association. for added safety and accountability, the Treasurer shall include a second Association Member signature on the Bank’s signature card. The Secretary and Treasurer shall perform all duties incident to their respective office and shall perform such other duties as may from time-to-time be assigned by the members or the President.

Section 5. The Road Commissioner. The Road Commissioner shall preside over the Road Commission, made up of an Association Member from each of the three sections of road, Red Moose Lane from the gate including Fisher Lane, Ermine Road and upper Red Moose Lane to the end. The Commissioner, along with the President, shall convene an annual meeting of the Commission each Spring and develop a report of the maintenance requirements for the ensuing year. Said report shall be presented to the Executive Board to be approved at the Association’s annual meeting.

ARTICLE IV

**Voting**

At all meetings and elections, the Members may cast only one vote for each subdivision parcel owned and all such parcel owned by tenant in common or joint tenants may cast only one vote as a group for each parcel owned. For any vote to be effective on any issue, there must be a vote in favor of the decision of simple majority of the members present or voting by proxy or absentee ballot. Voting shall be by only those present or voting by written proxy or absentee ballot from one member to another member who is present at the meeting. The proxy shall be either general or specific. Absentee voting is allowed by Title 23, M.R.S.A., Sections 3101-3104. Absentee ballots must be returned by regular mail or e-mail and be received by the Secretary at least by the business day before the meeting.

ARTICLE V

**Amendments**

The By-Laws of the Association may be amended, altered or rescinded only by two-thirds (2/3) of the members at an annual meeting. Amendments may be proposed by any member.

ARTICLE VI

**Meetings**

The Association shall hold an annual meeting in June of each year to elect Board Members and to conduct business and shall hold other meetings as necessary.

Section 1. Annual Meetings. There shall be an annual meeting of the members of the Association on or about June, at such time and place as may be designated in Sandy River Plantation, Maine of each year. Notice for such meeting shall be given, either by USPS or email, by the Board, thirty (30) days in advance.

Section 2. Special Meetings. Special meetings of the Members shall be held whenever called by the President or by at least three (3) Members. Thirty (30) days notices shall be given to all Members.

Section 3. Notice of meetings shall be given as provided for in Title 23, M.R.S.A., Sections 3101 to 3104.

Section 4. All Membership meetings shall use a simplified Robert's Rules of Order.

ARTICLE VII

**Membership**

The members of the Association shall be limited to the owners, their heirs, successors and assigns of the lots benefitted by the private ways as before referenced on said Plan. The holder or owner of a security interest only, such as a mortgagee, shall not be qualified to be a member.

Section 1. Qualifications. Only persons qualified to be Members under Title 23, M.R.S.A., Sections 3101 to 3104 shall be Members.

Section 2. Member shall have no vested right, interest or privilege of, in, or to the assets, functions, affairs, or facilities of the Association, or any right, interest, or privilege which may be transferable or inheritable, or which shall continue after membership ceases.

ARTICLE VIII

**Maintenance Fees**

Section 1. The Association shall have the right and power to subject the property of its members, to an annual road maintenance fee pursuant to Title 23, M.R.S.A., Sections 3101 to 3104, using the formula one fee per parcel as defined by the Town for real estate tax assessment purposes. In the case of a member parcel having been further subdivided into two or more contiguous parcels, the subsequent parcels will be considered merged for maintenance fee assessment purposes, as long as contiguous parcels have an owner in common.

Section 2. Within thirty (30) days from the date of the annual meeting, each member shall pay the maintenance fee and such payments shall be used by the Association to create and continue a Maintenance Fund, to be used by the Association as hereinafter stated. The maintenance fee will be delinquent if not paid within thirty (30) days from the due date. If the maintenance fee is not paid within one (1) year from the due date, the property is subject to a Notice of Claim (NOC), pursuant to Title 23, M.R.S.A., Sections 3101 to 3104. Upon the listing of a Members property for sale, that is past due, said property is subject to an immediate NOC.

Section 3. The annual maintenance fee may be adjusted from year-to-year by the Members, as road maintenance needs may require.

Section 4. Each member's parcel as of the date of the annual meeting, shall be assessed the annual maintenance fee. The Association shall have the power and authority to enforce and collect said maintenance fees by any action including actions at law and equity, and including attachment of members' property. Members who are in default of their maintenance fees shall also be liable to the Association for reasonable interest and late charges set in advance by the Association and for the Association's reasonable costs of collection, filing fees, including but not limited to, attorney's fees and costs. The maintenance fees shall constitute a burden upon the land of the members and shall run with the land.

Section 5. Special maintenance fee assessments for emergencies and/or budget deficits may be assessed on the members in addition to the annual maintenance fee if authorized by the members at special membership meetings.

Section 6. The maintenance fee shall be used for repairing and maintaining said road, including the drainage and storm water management facilities and the sight distances on the curves and intersections of the roads. It shall also be used for costs of consultants and operating costs of the Association.

Section 7. Any damage to the road by an owner, his/her guests, or his/her contractors beyond normal wear and tear shall be the responsibility of that owner, and the cost of any repairs necessitated by such damage, including, but not limited to, the costs of collection of attorney fees, filing fees, may be assessed against said owner by the Board of Directors.

ARTICLE IX

**Liability Of Officers**

Section 1. The officers of the Association shall not be liable to the Members of the Association for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The Members of the Association shall indemnify and hold harmless each of the officers against all contractual liability to others arising out of contracts made by the officers on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of these By-Laws. It is intended that the Officers shall have no personal liability with respect to any contract made by them on behalf of the Association. It is also intended that any liability of any member of the Association arising out of any contract made by said officers either individually, pursuant to authority provided hereunder, or acting as a group in the form of a Board of Directors, or out of the aforesaid indemnity in favor of said Officers, shall be limited to such proportion of the total liability thereunder as his Membership bears to the entire Membership in the Association. The Association reserves the right to insure the Association against any liability of its members in the future.Any such liability insurance policy will require the approval of the Association at the annual meeting.

MY NOTES TO ASSOCIATION MEMBERS: My source for the above Articles were taken from a combination of websites, including, the Maine Alliance For Road Associations (MARA), various sample by-laws, the Maine Department of Environmental Protection, and our own Beach Association By-laws,

I fully realized that the assessment formula stated above deviates somewhat from the one we have been using. More specifically, we have assessed one maintenance fee per lot as taxed by the Town for real estate tax purposes. However, as a result of my research of various websites referenced above, my opinion has evolved somewhat, that billing multiple lots individually may not meet the ‘fair and equitable’ criteria of the statute and probably would not stand up if challenged legally. Furthermore, according to the M.R.S.A., each member lot has one vote at the meetings. I do not feel that it is in the Association’s best interest to give any one member more than one vote as it could potentially give that member control of the Association. We may want to specifically state in the Bylaws that, ‘no member will have more than two votes at the annual Association meeting’. It is my opinion that if the Association defines ‘parcel’ to include multiple contiguous lots as one parcel, it would in-turn limit the number of votes at the meeting.

One administrator of MARA has offered the below definition of ‘parcel’ for road fee assessment purposes:

A parcel as defined herein will include property (lot or lots) that meets at least one of the following criteria: 1. A single property representing sole ownership interest in the Association. 2. Multiple properties with an owner in common. 3. Any property that contains a dwelling unit comprised of a bedroom, bathroom, and kitchen. Property meeting two of the above will be defined by criterion 3.

I am also proposing that the Association hold its annual meeting sometime in June rather than August to allow more time to get the annual maintenance done earlier in the summer rather than later. I am also proposing to change the due date of the annual road fee to 30-days after the date of the annual meeting, with all ensuing notices/assessments flowing from the date of the annual meeting. This year’s failure to get the contractor on the road prior to November, proved to be a problem. I was literally delayed four times from August-November, at which time I felt it was in the Association’s best interest to cancel the work until the Spring. It is my hope that by pushing the meeting date to sometime in early to mid-June, we will be in a better position to get the contractor on the road earlier and possibly, to get into a multi-year contract situation.

Furthermore, although not yet specifically stated above, I am thinking that it may be in the best interest of the Association to require that any contractor selected to do work on the road have at least a $1mm liability insurance policy. I have been told by Ken Haley of M&H that they carry $5MM liability coverage.

I invite your comments and/or recommendations. Chuck (207-839-6079)