

2018

# Town of Appleton Maine Ordinances

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# **TOWN OF APPLETON**

## ***ADDRESSING ORDINANCE***

***JUNE 13, 1995***

# Addressing Ordinance of the Town of Appleton, Maine

## SECTION 1. PURPOSE

The purpose of this ordinance is to enhance the easy and rapid location of properties for the delivery of public safety and emergency, postal delivery, and business delivery.

## SECTION 2. AUTHORITY

This ordinance is adopted pursuant to and consistent with the Municipal Home Rule Powers as provided for in Article VIII, Part 2, Section 1 of the Constitution of the State of Maine and Title 30-A M.R.S.A. Section 3001.

## SECTION 3. ADMINISTRATION

This ordinance shall be administered by the Board of Selectmen who shall assign road names and numbers to all properties, both on existing and proposed roads. The selectmen shall be responsible for maintaining the following official records of this ordinance:

1. A map of Appleton for official use showing road names and numbers.
2. An alphabetical list of property owners as identified by current assessment records, by the last name, showing the assigned numbers.
3. An alphabetical list of all roads with property owners listed in order of their assigned number.
4. The following names shall be assigned to existing roads as of the date of this ordinance. The GIS map shows the corresponding roads and names:

**APPLETON ROAD NAME DIRECTORY (DATE 6-20-95)**

<u>ROAD NAME</u>	<u>STARTING POINT</u>	<u>ENDING POINT</u>
Appleton Ridge Road	Union Town Line	Searsmont Town Line
Back Road	West Appleton Road	Dead End
Burkettville Road	Route 131	Liberty Town Line
Cedar Lane	West Appleton Road	Dead End
Camden Road	Searsmont Road	Hope Town Line
Campground Road	Burkettville Road	Washington Town Line
Chaples Road	Union Road	Town House Hill
Collinstown Road	Union Town Line	Liberty Town Line
Conary Lane	Sennebec Road	Dead End
Esancy Road	Fishtown Road	Dead End
Fishtown Road	Burkettville Road	Liberty Town Line
Guinea Ridge Road	Union Town Line	Proctors Corner
Gurneytown Road	Sennebec Road	Peasetown Road
Gushee Road	Sennebec Road	Dead End
Hall Lane	Peabody Road	Dead End
Hatchery Lane	Fishtown Road	Dead End
Hillside Road	Gurneytown Road	Dead End
Jones Hill Road	Gurneytown Road	Dead End
Lime Kiln Lane	Magog Road	Dead End
Lodge Lane	Union Road	Dead End
Lower Road	West Appleton Road	Dead End
Magog Road	Camden Road	Searsmont Town Line
Mitchell Hill Road	Burkettville Road	Dead End
Miller Cemetery Road	Collinstown Road	Dead End
Old County Road	West Appleton Road	Dead End
Peabody Road	Sennebec Road	Camden Road
Peasetown Road	Gurneytown Road	Hope Town Line
Pettingill Lane	West Appleton Road	Dead End
Sennebec Road	Appleton Village Ctr.	Union Town Line
Searsmont Road	Appleton Village Ctr.	Searsmont Town Line
Sleepy Hollow Road	Sennebec Road	Gurneytown Road
Snow Hill Road	Burkettville Road	Dead End
Town Hill Road	Appleton Village Ctr.	Appleton Ridge Road
Union Road	Appleton Village Ctr.	Union Town Line
West Appleton Road	Searsmont Road	Liberty Town Line
Whitney Road	Appleton Ridge Road	Dead End
Cottage Road	Gushee Road	Dead End
Shore Lane	Sennebec Road	Dead End
Pond Lane	Sennebec Road	Dead End
Lilly Lane	Sennebec Road	Dead End

#### SECTION 4. NAMING SYSTEM

All roads in the Town of Appleton that serve two or more addresses shall be named regardless of whether the ownership is private or public. A road name assigned by the Town of Appleton shall not constitute of imply acceptance of the road as a public way. The following criteria shall govern the naming system:

1. Similar names – no two roads shall be given the same or similar-sounding (e.g. Beech and Peach, Pine Lane and Pine Road) names.
2. Each road shall have the same name throughout its entire length.

#### SECTION 5. NUMBERING SYSTEM

Numbers shall be assigned every 10 feet along both sides of the road, with even numbers appearing on the left side of the road and odd numbers appearing on the right side of the road, determined by the number origin. The following criteria shall govern the numbering system:

1. All number origins shall begin from the designated center of Appleton or that end of the road closest to the designated center. For a dead end road, numbering shall originate at the intersection of the adjacent road and terminate at the dead end.
2. The number assigned to each structure shall be that of the numbered interval falling closest to the front door or driveway of said structure.
3. Every structure with more than one principal use or occupancy shall have a separate number for each use or occupancy (i.e. duplexes will have two separate numbers; apartments will have one road numbered with an apartment number, such as 235 Elm Street Apt. 2).

#### SECTION 6. COMPLIANCE

All owners of structures shall, on or before the effective date of this ordinance, display and maintain in a conspicuous place on said structure, the assigned numbers in the following manner:

1. Number on the structure or residence.  
Where the residence or structure is within 50 feet of the edge of the road right-of-way, the assigned number shall be displayed on the front of the residence or structure in the vicinity of the front door entry.
2. Number at the street line.  
Where the residence or structure is over 50 feet from the edge of the road right-of-way, the assigned number shall be displayed on a post, fence, wall, mail box, or on some structure at the property line adjacent to the walk or access drive to the residence or structure.
3. Size and color of numbers.  
Numbers shall be displayed in a color and size approved for use by the selectmen and shall be located as to be visible from the road.

4. Every person whose duty is to display the assigned number shall remove any different number which might be mistaken for, or confused with, the number assigned in conformance with this ordinance.
5. Interior location.  
All residents should post the assigned number and road name adjacent to their telephone for emergency reference.

## SECTION 7. DEVELOPMENT AND SUBDIVISIONS

All new developments and subdivisions shall be named and numbered in accordance with the provisions of this ordinance and as follows:

1. New developments.  
Whenever any residence or other structure is constructed or developed, it shall be the duty of the new owner to produce an assigned number from the Planning Board. This shall be done at the time of the issuance of the building permit.
2. New subdivisions.  
Any prospective subdivider shall show a proposed road name and lot numbering system on the pre-application on submissions to the Planning Board. Approval by the Planning Board shall constitute the assignment of road numbers to lots in the subdivision. On the final plan showing proposed roads, the applicant shall make on the plan, lines or dots, in the center of the street every 10 feet so as to aid in assignment of numbers to structures subsequently constructed.

## SECTION 8. EFFECTIVE DATE

The ordinance shall become effective July 1, 1995. It shall be the duty of the Town of Appleton to notify by mail each owner and the Post Office of the new address within thirty (30) days. It shall be the duty of each property owner to comply with this ordinance within thirty (30) days of notification. On new structures, numbering will be installed prior to final inspection, if required by local ordinance, or when the structure is first used or occupied, whichever comes first.

A True Attest Copy:

Pamela J. Tibert

Approved - June 13, 1995 Special Town Meeting

## **Town of Appleton Budget Committee Ordinance**

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### **Section 1. Establishment.**

Pursuant to 30-A M.R.S.A. Section 3001, a Budget Committee is hereby established for the Town of APPLETON, Maine.

### **Section 2. Composition; appointment; qualifications; terms; vacancies.**

The Committee shall consist of **9** members who shall be appointed by the municipal officers and who shall be registered voters of the Town. No town official or employee receiving over \$2,000.00 per Town's fiscal year in compensation from the Town of Appleton may be a member. Members shall serve for terms of **3** years. For transition purposes, the initial terms shall be staggered so that as nearly an equal number of terms shall expire annually. Vacancies shall be filled within 90 days by appointment of the municipal officers for the unexpired term.

### **Section 3. Officers; meetings; quorum; procedure.**

The Committee shall annually elect a Chairman and a Secretary from among its members. The Chairman shall call meetings as necessary or when so requested by a majority of members or the municipal officers. A quorum necessary to conduct business shall consist of at least a majority of members. The Chairman shall preside at all meetings. The Secretary shall maintain a record of all proceedings including all correspondence of the Committee. All meetings and records shall be subject to the Maine Freedom of Access Act, 1 M.R.S.A. Sections 401-410. The Committee may adopt rules of procedure not inconsistent with this ordinance.

### **Section 4. Powers and duties; authority; recommendations; official cooperation.**

The Committee shall have the following powers and duties:

- A. To review and make recommendations on the annual operating budget as proposed by the municipal officers;
- B. To review and make recommendations on capital expenditures as proposed by the municipal officers;
- C. To review and make recommendations on the annual school budget as proposed by the school board/school committee;
- D. To review and make recommendations on capital expenditures as proposed by the school board/school committee;
- E. To review and make recommendations on supplemental appropriations and expenditures and other budgetary action whenever proposed by the municipal officers;
- F. To make such other recommendations on fiscal matters as it may from time to time deem advisable.

The Committee's authority shall be advisory only. Any recommendation on a matter requiring town meeting action shall be printed with the article in the warrant and on the ballot, if any, along with such other recommendations as may be included by the municipal officers or required by law. The municipal officers shall cooperate with and provide the Committee with such information as may be reasonably necessary and available to enable it to carry out its functions under this ordinance.

**Section 5.** This ordinance shall supersede all previous town meeting warrant articles establishing a budget committee.

Adopted June 09, 2010, Annual Town Meeting  
Amended January 12, 2016, Special Town Meeting  
Amended March 7, 2017, Special Town Meeting

A True Attest:



# **Town of Appleton**

## **Cable Television Ordinance**

### **Section I Purpose**

The purpose of this ordinance is to provide for Town regulation and use of the community antenna television system, including its construction, operation and maintenance in, along, upon, across, over and under the streets, alleys, public ways and all extensions thereof and additions thereto in the Town of Appleton, of the community antenna television system and to provide conditions accompanying the grant of franchise, and providing for the Town regulation of cable television operation.

### **Section II Definitions**

“Cable Television” shall mean any community antenna television system or facility that, in whole or in part, receives directly or indirectly, over the air, and amplifies or otherwise modifies signals transmitting programs broadcast by one or more television or radio stations, originates its own signal or signals produced through any of its community access channels and distributes such signals by wire or cable to subscribing members of the public who pay for such services, but such term shall not include any such facility that serves only the residents of one or more dwellings under common ownership, control or management.

“Cable Television Company” shall be any person, firm or corporation owning, controlling, operating, managing, or leasing a cable television system within the Town of Appleton, hereinafter referred to as “the company.”

“Town” shall mean the Town of Appleton, organized and existing under the laws of the State of Maine, and the area within its territorial limits.

### **Section III Franchise Required**

No person, firm or corporation shall install, maintain or operate within the Town or any of its public ways or other public areas any equipment or facilities for the operation of a cable television system unless a franchise authorizing the use of said public ways or areas has first been obtained pursuant to the provisions of this ordinance and unless said franchise is in full force and effect.

### **Section IV Franchise Contract**

- A. The Board of Selectmen in the Town of Appleton may contract on such terms, conditions and fees as they deem in the best interests of the Town and its residents with one or more television companies for the operation of a cable television system within the Town, including the granting of a franchise or franchises for the operation thereof for a period not to exceed fifteen (15) years.
- B. Applicants for a franchise shall pay a non-refundable filing fee to the Town of \$50.00 to defray the cost of public notice and advertising expenses relating to such application. The application should be filed with the Town Clerk and shall contain such information as the Town may require, including but not limited to a general description of the applicant's proposed operation including a list of streets or areas of Town to be served or not to be served, a schedule of proposed charges, a statement detailing its previous two fiscal years, an estimated fifteen (15) year financial projection of its proposed annual Town franchise fee, if any, or the basis for same, and a statement detailing the prior operational experience of the applicant in both cable television and microwave service, including that of its officers, management, and staff to be associated with the operation.
- C. Any franchise contract may be revoked by the Board of Selectmen, Town of Appleton, for good and sufficient cause, after due notice to the company and a public hearing thereon, with the right to appeal to the Superior Court under Rule 80B of the Maine Rules of Civil Procedure.

## **Section V Public Comment Periods**

- A. The Selectmen may issue a request for proposals prior to issuing a franchise contract. Before issuance of a request for proposals, the Town should hold a public hearing with at least seven (7) days notice by posting in at least one public place or publication of at least one local newspaper for the purpose of determining any special local needs or interests regarding cable television. Copies of the proposed request for proposals shall be available at the Town Office at least seven (7) days prior to said hearing for review by interested parties.
  
- B. Any proposal submitted by a prospective cable television company shall be filed with the Town Clerk's office, shall be deemed a public record, and shall be available for a period of not less than fourteen (14) days prior to the Town taking any formal action thereon.
  
- C. Before authorizing the issuance of any franchise contract, the Board of Selectmen, Town of Appleton, shall review the applicant's character, financial and technical qualifications, and the adequacy and feasibility of its qualifications to operate a cable television system within the Town and shall hold a public hearing thereon with at least seven (7) days notice by posting in at least one public place and publication in at least one local newspaper.

## **Section VI Performance Bond & Insurance**

Upon the execution of any such franchise contract, the company shall file such surety performance bond and evidence of such public liability insurance coverage as the Board of Selectmen, Town of Appleton, may require. Said performance bond may be reduced upon the completion of the installation of said system as per said contract as allowed by the Board of Selectmen, Town of Appleton.

## **Section VII Regulation**

In the administration of this ordinance and the regulation of a cable television, the Board of Selection, Town of Appleton, shall have the authorization to adopt such rules and regulations as they deem necessary for monitoring and regulating and to hold any public hearings and issue such appropriate orders as they may deem necessary to correct any deficiencies in the operation of said system, which decisions, and findings shall be final and binding upon all parties including the company, except such a decision or finding may be appealed to Superior Court under said Rule 80B.

## **Section VIII Enforcement**

Any violation of the ordinance by any company is a civil violation subject to a civil penalty of \$100.00 per day for each day that said violation continues. The Code Enforcement Officer, Town of Appleton, is authorized to prosecute said violations in the Maine District Court pursuant to law.

## **Section IX Adoption**

This ordinance is effective upon its adoption by the Board of Selectmen, Town of Appleton.

Approved this 10<sup>th</sup> day of March 1992.

Town of Appleton by its Selectmen:

John Fancy

Keith J Rose

J. Arthur Clark

**FLOODPLAIN MANAGEMENT ORDINANCE**  
**FOR THE**  
**TOWN OF APPLETON, MAINE**

---

ENACTED: June 15, 2016  
Date

EFFECTIVE: June 15, 2016  
Date

CERTIFIED BY: *Pamela J. Smith*  
Signature

CERTIFIED BY: Pamela J. Smith  
Print Name

Town Clerk  
Title

Affix Seal

# FLOODPLAIN MANAGEMENT ORDINANCE

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## **ARTICLE I - PURPOSE AND ESTABLISHMENT**

Certain areas of the Town of Appleton, Maine are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968.

Therefore, the Town of Appleton, Maine has chosen to become a participating community in the National Flood Insurance Program, and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this Floodplain Management Ordinance.

It is the intent of the Town of Appleton, Maine to require the recognition and evaluation of flood hazards in all official actions relating to land use in the floodplain areas having special flood hazards.

The Town of Appleton has the legal authority to adopt land use and control measures to reduce future flood losses pursuant to Title 30-A MRSA, Sections 3001-3007, 4352, 4401-4407, and Title 38 MRSA, Section 440.

The National Flood Insurance Program, established in the aforesaid Act, provides that areas of the Town of Appleton having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. This Ordinance establishes a Flood Hazard Development Permit system and review procedure for development activities in the designated flood hazard areas of the Town of Appleton, Maine.

The areas of special flood hazard, Zones A and AE, for the Town of Appleton, Knox County, Maine, identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study – Knox County, Maine," dated July 6, 2016 with accompanying "Flood Insurance Rate Map" dated July 6, 2016 with panels: 40D, 45D, 50D, 75D, 155D, 135D derived from the county wide digital Flood Insurance Rate Map entitled "Digital Flood Insurance Rate Map, Knox County, Maine," are hereby adopted by reference and declared to be a part of this Ordinance.

## **ARTICLE II - PERMIT REQUIRED**

Before any construction or other development (as defined in Article XIII), including the placement of manufactured homes, begins within any areas of special flood hazard established in Article I, a Flood Hazard Development Permit shall be obtained from the Planning Board. This permit shall be in addition to any other permits which may be required pursuant to the codes and ordinances of the Town of Appleton, Maine.

## **ARTICLE III - APPLICATION FOR PERMIT**

The application for a Flood Hazard Development Permit shall be submitted to the Code Enforcement Officer and shall include:

- A. The name, address and phone number of the applicant, owner, and contractor;
- B. An address and a map indicating the location of the construction site;
- C. A site plan showing location of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions;

- D. A statement of the intended use of the structure and/or development;
- E. A statement of the cost of the development including all materials and labor;
- F. A statement as to the type of sewage system proposed;
- G. Specification of dimensions of the proposed structure and/or development;

[Items H-K.2 apply only to new construction and substantial improvements.]

- H. The elevation in relation to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or to a locally established datum in Zone A only, of the:
  - 1. base flood at the proposed site of all new or substantially improved structures, which is determined:
    - a. in Zones AE, from data contained in the "Flood Insurance Study - Knox County, Maine," as described in Article I; or,
    - b. in Zone A:
      - (1) from any base flood elevation data from federal, state, or other technical sources (such as FEMA's Quick-2 model), including information obtained pursuant to Article VI.K. and VIII.D.;
      - (2) from the contour elevation extrapolated from a best fit analysis of the floodplain boundary when overlaid onto a USGS Quadrangle Map or other topographic map prepared by a Professional Land Surveyor or registered professional engineer, if the floodplain boundary has a significant correlation to the elevation contour line(s); or, in the absence of all other data,
      - (3) to be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building.
  - 2. highest and lowest grades at the site adjacent to the walls of the proposed building;
  - 3. lowest floor, including basement; and whether or not such structures contain a basement; and,
  - 4. level, in the case of non-residential structures only, to which the structure will be floodproofed;
- I. A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in Article VI;
- J. A written certification by a Professional Land Surveyor, registered professional engineer or architect, that the base flood elevation and grade elevations shown on the application are accurate;
- K. The following certifications as required in Article VI by a registered professional engineer or architect:



1. a Floodproofing Certificate (FEMA Form 81-65, as amended), to verify that the floodproofing methods for any non-residential structures will meet the floodproofing criteria of Article III.H.4.; Article VI.G.; and other applicable standards in Article VI;
  2. a Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Article VI.L.2.a.;
  3. a certified statement that bridges will meet the standards of Article VI.M.;
  4. a certified statement that containment walls will meet the standards of Article VI.N.;
- L. A description of the extent to which any water course will be altered or relocated as a result of the proposed development; and,
- M. A statement of construction plans describing in detail how each applicable development standard in Article VI will be met.

#### **ARTICLE IV - APPLICATION FEE AND EXPERT'S FEE**

A non-refundable application fee of \$50.00 shall be paid to the Town Clerk and a copy of a receipt for the same shall accompany the application.

An additional fee may be charged if the Planning Board/Code Enforcement Officer and/or Board of Appeals needs the assistance of a professional engineer or other expert. The expert's fee shall be paid in full by the applicant within 10 days after the town submits a bill to the applicant. Failure to pay the bill shall constitute a violation of the ordinance and be grounds for the issuance of a stop work order. An expert shall not be hired by the municipality at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject. An applicant who is dissatisfied with a decision to hire expert assistance may appeal that decision to the Board of Appeals.

#### **ARTICLE V - REVIEW STANDARDS FOR FLOOD HAZARD DEVELOPMENT PERMIT APPLICATIONS**

The Planning Board and Code Enforcement Officer shall:

- A. Review all applications for the Flood Hazard Development Permit to assure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of Article VI (Development Standards) have been, or will be met;
- B. Utilize, in the review of all Flood Hazard Development Permit applications:
  1. the base flood and floodway data contained in the "Flood Insurance Study - Knox County, Maine," as described in Article I;
  2. in special flood hazard areas where base flood elevation and floodway data are not provided, the Planning Board and Code Enforcement Officer shall obtain, review and reasonably utilize any base flood elevation and floodway data from federal, state, or other technical sources, including information obtained pursuant to Article III.H.1.b.; Article VI.K.; and Article VIII.D., in order to administer Article VI of this Ordinance; and,

3. when the community establishes a base flood elevation in a Zone A by methods outlined in Article III.H.1.b., the community shall submit that data to the Maine Floodplain Management Program.
- C. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in Article I of this Ordinance;
  - D. In the review of Flood Hazard Development Permit applications, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1344;
  - E. Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Floodplain Management Program prior to any alteration or relocation of a water course and submit copies of such notifications to the Federal Emergency Management Agency;
  - F. If the application satisfies the requirements of this Ordinance, approve the issuance of one of the following Flood Hazard Development Permits based on the type of development:
    1. A two part Flood Hazard Development Permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the Code Enforcement Officer with an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer or architect based on the Part I permit construction, “as built”, for verifying compliance with the elevation requirements of Article VI, paragraphs F, G, or H. Following review of the Elevation Certificate data, which shall take place within 72 hours of receipt of the application, the Code Enforcement Officer shall issue Part II of the Flood Hazard Development Permit. Part II shall authorize the applicant to complete the construction project; or,
    2. A Flood Hazard Development Permit for Floodproofing of Non-Residential Structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the floodproofing standards of Article VI.G.1.a., b., and c. The application for this permit shall include a Floodproofing Certificate signed by a registered professional engineer or architect; or,
    3. A Flood Hazard Development Permit for Minor Development for all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. Minor development also includes, but is not limited to: accessory structures as provided for in Article VI.J., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves and piers.
  - G. Maintain, as a permanent record, copies of all Flood Hazard Development Permit Applications, corresponding Permits issued, and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of Article IX of this Ordinance, and copies of Elevation Certificates, Floodproofing Certificates, Certificates of Compliance and certifications of design standards required under the provisions of Articles III, VI, and VII of this Ordinance.

## ARTICLE VI - DEVELOPMENT STANDARDS

All developments in areas of special flood hazard shall meet the following applicable standards:

A. **All Development** - All development shall:

1. be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
2. use construction materials that are resistant to flood damage;
3. use construction methods and practices that will minimize flood damage; and,
4. use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during flooding conditions.

B. **Water Supply** - All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.

C. **Sanitary Sewage Systems** - All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.

D. **On Site Waste Disposal Systems** - On site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.

E. **Watercourse Carrying Capacity** - All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the watercourse.

F. **Residential** - New construction or substantial improvement of any residential structure located within:

1. Zones AE shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.
2. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B; or Article VIII.D.

G. **Non Residential** - New construction or substantial improvement of any non-residential structure located within:

1. Zones AE shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation, or together with attendant utility and sanitary facilities shall:
  - a. be floodproofed to at least one foot above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;

- b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
  - c. be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K. and shall include a record of the elevation above mean sea level to which the structure is floodproofed.
2. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B; or Article VIII.D., or
- a. together with attendant utility and sanitary facilities meet the floodproofing standards of Article VI.G.1.

**H. Manufactured Homes** - New or substantially improved manufactured homes located within:

1. Zones AE shall:
- a. be elevated such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation;
  - b. be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and,
  - c. be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:
    - (1) over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by,
    - (2) frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).
    - (3) all components of the anchoring system described in Article VI.H.1.c.(1) & (2) shall be capable of carrying a force of 4800 pounds.
2. Zone A shall:
- a. be elevated on a permanent foundation, as described in Article VI.H.1.b., such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B; or Article VIII.D.; and
  - b. meet the anchoring requirements of Article VI.H.1.c.

**I. Recreational Vehicles** - Recreational Vehicles located within:

1. Zones A and AE, shall either:
  - a. be on the site for fewer than 180 consecutive days,
  - b. be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or,
  - c. be permitted in accordance with the elevation and anchoring requirements for "manufactured homes" in Article VI.H.1.

**J. Accessory Structures** - Accessory Structures, as defined in Article XIII, located within Zones A and AE, shall be exempt from the elevation criteria required in Article VI.F. & G. above, if all other requirements of Article VI and all the following requirements are met. Accessory Structures shall:

1. have unfinished interiors and not be used for human habitation;
2. have hydraulic openings, as specified in Article VI.L.2., in at least two different walls of the accessory structure;
3. be located outside the floodway;
4. when possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and,
5. have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Special Flood Hazard Area.

**K. Floodways** -

1. In Zone AE riverine areas, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway which is designated on the community's Flood Insurance Rate Map, unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
2. In Zones A and AE, riverine areas for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in the floodway as determined in Article VI.K.3. unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:
  - a. will not increase the water surface elevation of the base flood more than one foot at any point within the community; and,

- b. is consistent with the technical criteria contained in FEMA's guidelines and standards for flood risk analysis and mapping.
3. In Zones A and AE riverine areas, for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.

L. **Enclosed Areas Below the Lowest Floor** - New construction or substantial improvement of any structure in Zones A and AE that meets the development standards of Article VI, including the elevation requirements of Article VI, paragraphs F, G, or H and is elevated on posts, columns, piers, piles, "stilts," or crawlspaces may be enclosed below the base flood elevation requirements provided all the following criteria are met or exceeded:

1. Enclosed areas are not "basements" as defined in Article XIII;
2. Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement must either:
  - a. be engineered and certified by a registered professional engineer or architect; or,
  - b. meet or exceed the following minimum criteria:
    - (1) a minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;
    - (2) the bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade; and,
    - (3) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means;
3. The enclosed area shall not be used for human habitation; and,
4. The enclosed areas are usable solely for building access, parking of vehicles, or storage.

M. **Bridges** - New construction or substantial improvement of any bridge in Zones A and AE shall be designed such that:

1. when possible, the lowest horizontal member (excluding the pilings, or columns) is elevated to at least one foot above the base flood elevation; and
2. a registered professional engineer shall certify that:
  - a. the structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of Article VI.K.; and

- b. the foundation and superstructure attached thereto are designed to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.

N. **Containment Walls** - New construction or substantial improvement of any containment wall located within:

1. Zones A and AE shall:
  - a. have the containment wall elevated to at least one foot above the base flood elevation;
  - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
  - c. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K.

O. **Wharves, Piers and Docks** - New construction or substantial improvement of wharves, piers, and docks are permitted in Zones A and AE, in and over water if the following requirements are met:

1. wharves, piers, and docks shall comply with all applicable local, state, and federal regulations; and
2. for commercial wharves, piers, and docks, a registered professional engineer shall develop or review the structural design, specifications, and plans for the construction.

## **ARTICLE VII - CERTIFICATE OF COMPLIANCE**

No land in a special flood hazard area shall be occupied or used and no structure which is constructed or substantially improved shall be occupied until a Certificate of Compliance is issued by the Code Enforcement Officer subject to the following provisions:

- A. For New Construction or Substantial Improvement of any elevated structure the applicant shall submit to the Code Enforcement Officer, an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer, or architect, for compliance with Article VI, paragraphs F, G, or H.
- B. The applicant shall submit written notification to the Code Enforcement Officer that the development is complete and complies with the provisions of this ordinance.
- C. Within 10 working days, the Code Enforcement Officer shall:
  1. review the Elevation Certificate and the applicant's written notification; and,
  2. upon determination that the development conforms with the provisions of this ordinance, shall issue a Certificate of Compliance.

## **ARTICLE VIII - REVIEW OF SUBDIVISION AND DEVELOPMENT PROPOSALS**

The Planning Board shall, when reviewing subdivisions and other proposed developments that require review under other federal law, state law or local ordinances or regulations and all projects on 5 or more disturbed acres, or in the case of manufactured home parks divided into two or more lots, assure that:

- A. All such proposals are consistent with the need to minimize flood damage.
- B. All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.
- C. Adequate drainage is provided so as to reduce exposure to flood hazards.
- D. All proposals include base flood elevations, flood boundaries, and, in a riverine floodplain, floodway data. These determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency.
- E. Any proposed development plan must include a condition of plan approval requiring that structures on any lot in the development having any portion of its land within a Special Flood Hazard Area are to be constructed in accordance with Article VI of this ordinance. Such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The condition shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the Planning Board or local reviewing authority as part of the approval process.

## **ARTICLE IX - APPEALS AND VARIANCES**

The Board of Appeals of the Town of Appleton may, upon written application of an aggrieved party, hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the administration or enforcement of the provisions of this Ordinance.

The Board of Appeals may grant a variance from the requirements of this Ordinance consistent with state law and the following criteria:

- A. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- B. Variances shall be granted only upon:
  - 1. a showing of good and sufficient cause; and,
  - 2. a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and,
  - 3. a showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances; and,



4. a determination that failure to grant the variance would result in "undue hardship," which in this sub-section means:
  - a. that the land in question cannot yield a reasonable return unless a variance is granted; and,
  - b. that the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and,
  - c. that the granting of a variance will not alter the essential character of the locality; and,
  - d. that the hardship is not the result of action taken by the applicant or a prior owner.
- C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as it deems necessary.
- D. Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
  1. other criteria of Article IX and Article VI.K. are met; and,
  2. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- E. Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of Historic Structures upon the determination that:
  1. the development meets the criteria of Article IX, paragraphs A. through D. above; and,
  2. the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- F. Any applicant who meets the criteria of Article IX, paragraphs A. through E. shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:
  1. the issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;
  2. such construction below the base flood level increases risks to life and property; and,
  3. the applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.
- G. Appeal Procedure for Administrative and Variance Appeals

1. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party within thirty days after receipt of a written decision of the Code Enforcement Officer or Planning Board.
2. Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
3. The Board of Appeals shall hold a public hearing on the appeal within thirty-five days of its receipt of an appeal request.
4. The person filing the appeal shall have the burden of proof.
5. The Board of Appeals shall decide all appeals within thirty-five days after the close of the hearing, and shall issue a written decision on all appeals.
6. The Board of Appeals shall submit to the Planning Board/Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Planning Board to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.
7. Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five days from the date of any decision of the Board of Appeals.

#### **ARTICLE X - ENFORCEMENT AND PENALTIES**

- A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance pursuant to Title 30-A MRSA § 4452.
- B. The penalties contained in Title 30-A MRSA § 4452 shall apply to any violation of this Ordinance.
- C. In addition to any other actions, the Code Enforcement Officer, upon determination that a violation exists, may submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of flood insurance. The valid declaration shall consist of;
  1. the name of the property owner and address or legal description of the property sufficient to confirm its identity or location;
  2. a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance;
  3. a clear statement that the public body making the declaration has authority to do so and a citation to that authority;
  4. evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and,
  5. a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

## **ARTICLE XI - VALIDITY AND SEVERABILITY**

If any section or provision of this Ordinance is declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

## **ARTICLE XII - CONFLICT WITH OTHER ORDINANCES**

This Ordinance shall not in any way impair or remove the necessity of compliance with any other applicable rule, ordinance, regulation, bylaw, permit, or provision of law. Where this Ordinance imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this Ordinance shall control.

## **ARTICLE XIII - DEFINITIONS**

Unless specifically defined below, words and phrases used in this Ordinance shall have the same meaning as they have at common law and to give this Ordinance its most reasonable application. Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and not discretionary.

**Accessory Structure** - means a small detached structure that is incidental and subordinate to the principal structure.

**Adjacent Grade** - means the natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**Area of Special Flood Hazard** - means the land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in Article I of this Ordinance.

**Base Flood** - means the flood having a one percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood.

**Basement** - means any area of the building having its floor subgrade (below ground level) on all sides.

**Building** - see **Structure**.

**Certificate of Compliance** - A document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of this Ordinance.

**Code Enforcement Officer** - A person certified under Title 30-A MRSA, Section 4451 (including exceptions in subsection 4451, paragraph 1) and employed by a municipality to enforce all applicable comprehensive planning and land use laws and ordinances.

**Development** - means any man made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials.

**Digital Flood Insurance Rate Map (FIRM)** – see **Flood Insurance Rate Map**

**Elevated Building** - means a non-basement building

- a. built, in the case of a building in Zones A or AE, to have the top of the elevated floor elevated above the ground level by means of pilings, columns, post, piers, or "stilts;" and
- b. adequately anchored so as not to impair the structural integrity of the building during a flood of up to one foot above the magnitude of the base flood.

In the case of Zones A or AE, **Elevated Building** also includes a building elevated by means of fill or solid foundation perimeter walls with hydraulic openings sufficient to facilitate the unimpeded movement of flood waters, as required in Article V.L.L..

**Elevation Certificate** - An official form (FEMA Form 81-31, as amended) that:

- a. is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program; and,
- b. is required for purchasing flood insurance.

**Flood or Flooding** - means:

- a. A general and temporary condition of partial or complete inundation of normally dry land areas from:
  - 1. The overflow of inland or tidal waters.
  - 2. The unusual and rapid accumulation or runoff of surface waters from any source.
- b. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph a.1. of this definition.

**Flood Elevation Study** - means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

**Flood Insurance Rate Map (FIRM)** - means an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

**Flood Insurance Study** - see **Flood Elevation Study**.

**Floodplain or Flood-prone Area** - means any land area susceptible to being inundated by water from any source (see flooding).

**Floodplain Management** - means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

**Floodplain Management Regulations** - means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance,

and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

**Floodproofing** - means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and contents.

**Floodway** - see **Regulatory Floodway**.

**Floodway Encroachment Lines** - mean the lines marking the limits of floodways on federal, state, and local floodplain maps.

**Freeboard** - means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

**Functionally Dependent Use** - means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

**Historic Structure** - means any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  1. By an approved state program as determined by the Secretary of the Interior, or
  2. Directly by the Secretary of the Interior in states without approved programs.

**Locally Established Datum** - means, for purposes of this ordinance, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or any other established datum and is used in areas where Mean Sea Level data is too far from a specific site to be practically used.

**Lowest Floor** - means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area

other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements described in Article VI.L. of this ordinance.

**Manufactured Home** - means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

**Manufactured Home Park or Subdivision** - means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**Mean Sea Level** - means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

**Minor Development** - means all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. It also includes, but is not limited to: accessory structures as provided for in Article VI.J., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

**National Geodetic Vertical Datum (NGVD)** - means the national vertical datum, whose standard was established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD was based upon mean sea level in 1929 and also has been called "1929 Mean Sea Level (MSL)".

**New Construction** - means structures for which the "start of construction" commenced on or after the effective date of the initial floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

**North American Vertical Datum (NAVD)**- means the national datum whose standard was established in 1988, which is the new vertical datum used by the National Flood Insurance Program (NFIP) for all new Flood Insurance Rate Maps. NAVD is based upon vertical datum used by other North American countries such as Canada and Mexico and was established to replace NGVD because of constant movement of the earth's crust, glacial rebound, and subsidence and the increasing use of satellite technology.

**100-year flood** - see **Base Flood**.

**Recreational Vehicle** - means a vehicle which is:

- a. built on a single chassis;
- b. 400 square feet or less when measured at the largest horizontal projection, not including slideouts;
- c. designed to be self-propelled or permanently towable by a motor vehicle; and
- d. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

## **Regulatory Floodway -**

- a. means the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot, and
- b. when not designated on the community's Flood Insurance Rate Map, it is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.

**Riverine** - means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

**Special Flood Hazard Area** - see **Area of Special Flood Hazard**.

**Start of Construction** - means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, or modification of any construction element, whether or not that alteration affects the external dimensions of the building.

**Structure** - means, for floodplain management purposes, a walled and roofed building. A gas or liquid storage tank that is principally above ground is also a structure.

**Substantial Damage** - means, damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**Substantial Improvement** - means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- b. Any alteration of a Historic Structure, provided that the alteration will not preclude the structure's continued designation as a historic structure, and a variance is obtained from the community's Board of Appeals.

**Variance** - means a grant of relief by a community from the terms of a floodplain management regulation.

**Violation** - means the failure of a structure or development to comply with a community's floodplain management regulations.

#### **ARTICLE XIV - ABROGATION**

This ordinance repeals and replaces any municipal ordinance previously enacted to comply with the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).

60.3 (c) Rev. 01/16  
Prepared by DACF/JP



# Town of Appleton Local Food and Community Self-Governance Ordinance

## AN ORDINANCE TO PROTECT THE HEALTH AND INTEGRITY OF THE LOCAL FOOD SYSTEM IN THE TOWN OF APPLETON, KNOX COUNTY, MAINE.

**Section 1. Name.** This Ordinance shall be known and may be cited as the “Town of Appleton Local Food and Community Self-Governance Ordinance.”

### **Section 2. Definitions.**

As used in this ordinance:

(a) “Patron” means an individual who is the last person to purchase any product or preparation directly from a processor or producer and who does not resell the product or preparation.

(b) “Home consumption” means consumed within a private home.

(c) “Local Foods” means any food or food product that is grown, produced, or processed by individuals who sell directly to their patrons through farm-based sales or buying clubs, at farmers markets, roadside stands, fundraisers or at community social events.

(d) “Processor” means any individual who processes or prepares products of the soil or animals for food or drink.

(e) “Producer” means any farmer or gardener who grows any plant or animal for food or drink.

(f) “Community social event” means an event where people gather as part of a community for the benefit of those gathering, or for the community, including but not limited to a church or religious social, school event, potluck, neighborhood gathering, library meeting, traveling food sale, fundraiser, craft fair, farmers market and other public events.

**Section 3. Preamble and Purpose.** We the People of the Town of Appleton, Knox County, Maine have the right to produce, process, sell, purchase and consume local foods thus promoting self-reliance, the preservation of family farms, and local food traditions. We recognize that family farms, sustainable agricultural practices, and food processing by individuals, families and non-corporate entities offers stability to our rural way of life by enhancing the economic, environmental and social wealth of our community. As such, our right to a local food system requires us to assert our inherent right to self-government. We recognize the authority to protect that right as belonging to the Town of Appleton.

We have faith in our citizens’ ability to educate themselves and make informed decisions. We hold that federal and state regulations impede local food production and constitute a usurpation of our citizens’ right to foods of their choice. We support food that fundamentally respects human dignity and health, nourishes individuals and the community, and sustains producers, processors and the environment. We are therefore

**Local Food and Community Self-Governance Ordinance of 2012**

duty bound under the Constitution of the State of Maine to protect and promote unimpeded access to local foods.

# Town of Appleton Local Food and Community Self-Governance Ordinance

The purpose of the Local Food and Community Self-Governance Ordinance is to:

- (i) Provide citizens with unimpeded access to local food;
- (ii) Enhance the local economy by promoting the production and purchase of local agricultural products;
- (iii) Protect access to farmers' markets, roadside stands, farm based sales and direct producer to patron sales;
- (iv) Support the economic viability of local food producers and processors;
- (v) Preserve community social events where local foods are served or sold;
- (vi) Preserve local knowledge and traditional foodways.

**Section 4. Authority.** This Ordinance is adopted and enacted pursuant to the inherent, inalienable, and fundamental right of the citizens of the Town of Appleton to self-government, and under the authority recognized as belonging to the people of the Town by all relevant state and federal laws including, but not limited to the following:

The Declaration of Independence of the United States of America, which declares that governments are instituted to secure peoples' rights, and that government derives its just powers from the consent of the governed.

Article I, § 2 of the Maine Constitution, which declares: "all power is inherent in the people; all free governments are founded in their authority and instituted for their benefit, [and that] they have therefore an unalienable and indefeasible right to institute government and to alter, reform, or totally change the same when their safety and happiness require it."

§3001 of Title 30-A of the Maine Revised Statutes, which grants municipalities all powers necessary to protect the health, safety, and welfare of the residents of the Town of Appleton.

§211 of Title 7 of the Maine Revised Statutes which states: "it is the policy of the State to encourage food self-sufficiency for the State."

## **Section 5. Statements of Law.**

**Section 5.1. Licensure/Inspection Exemption.** Producers or processors of local foods in the Town of Appleton are exempt from licensure and inspection provided that the transaction is only between the producer or processor and a patron when the food is sold for home consumption. This includes any producer or processor who sells his or her products at farmers' markets or roadside stands; sells his or her products through farm-based sales directly to a patron; or delivers his or her products directly to patrons.

## **Local Food and Community Self-Governance Ordinance of 2012**

**Section 5.1.a. Licensure/Inspection Exemption.** Producers or processors of local foods in the Town of Appleton are exempt from licensure and inspection provided that their products are prepared for, consumed, or sold at a community social event.

**Section 5.2. Right to Access and Produce Food.** Appleton citizens possess the right to produce, process, sell, purchase, and consume local foods of their choosing.

**Section 5.3. Right to Self-Governance.** All citizens of Appleton possess the right to a form of governance which recognizes that all power is inherent in the people, that all free governments are founded on the people's authority and consent.

**Section 5.4. Right to Enforce.** Appleton citizens possess the right to adopt measures which prevent the violation of the rights enumerated in this Ordinance.

**Section 6. Statement of Law. Implementation.** The following restrictions and provisions serve to implement the preceding statements of law.

**Section 6.1. State and Federal Law.** It shall be unlawful for any law or regulation adopted by the state or federal government to interfere with the rights recognized by this Ordinance. It shall be unlawful for any corporation to interfere with the rights recognized by this Ordinance. The term "corporation" shall mean any business entity organized under the laws of any state or country.

**Section 6.2. Patron Liability Protection.** Patrons purchasing food for home consumption may enter into private agreements with those producers or processors of local foods to waive any liability for the consumption of that food. Producers or processors of local foods shall be exempt from licensure and inspection requirements for that food as long as those agreements are in effect.

**Section 7. Civil Enforcement.** The Town of Appleton may enforce the provisions of this Ordinance through seeking equitable relief from a court of competent jurisdiction. Any individual citizen of the Town of Appleton shall have standing to vindicate any rights secured by this ordinance which have been violated or which are threatened with violation, and may seek relief both in the form of injunctive and compensatory relief from a court of competent jurisdiction.

# Town of Appleton Local Food and Community Self-Governance Ordinance

**Section 8. Town Action against Pre-emption.** The foundation for making and adoption of this law is the peoples' fundamental and inalienable right to govern themselves, and thereby secure their rights to life, liberty, and the pursuit of happiness. Any attempt to use other units and levels of government to preempt, amend, alter or overturn this Ordinance or parts of this Ordinance shall require the Town to hold public meetings that explore the adoption of other measures that expand local control and the ability of citizens to protect their fundamental and inalienable right to self-government. It is declared that those other measures may legitimately include the partial or complete separation of the Town from the other units and levels of government that attempt to preempt, amend, alter, or overturn this Ordinance.

**Section 9. Effect.** This Ordinance shall be effective immediately upon its enactment.

**Section 10. Severability Clause.** To the extent any provision of this Ordinance is deemed invalid by a court of competent jurisdiction, such provision will be removed from the Ordinance, and the balance of the Ordinance shall remain valid.

**Section 11. Repealer.** All inconsistent provisions of prior Ordinances adopted by the Town of Appleton are hereby repealed, but only to the extent necessary to remedy the inconsistency.

Adopted – June 13, 2012

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Appleton Town Seal

---

Appleton Town Clerk

---

Date

A True Attest Copy:

**Local Food and Community Self-Governance Ordinance of 2012**

Pamela J. Tibert

## Hazardous Waste Ordinance for the town of Appleton

The transportation, disposal, or storage of hazardous wastes as designated under the U.S. Clean Water Act, Section 311, Public Law 92-500 and/or the disposal or storage of radioactive waste materials as defined by 38 MRSA 361-D1-B, within the boundaries of the Town of Appleton, Maine is prohibited. Any request for an exception to this prohibition shall be submitted in writing to the Selectmen and brought to the whole Town of Appleton, acting as the body politic, to be voted on by all bona fide voters present in a Town Meeting.

Adopted 3/21/81

A True Attest Copy

Pamela Tibert

# **Lot Specification and Building Permit Ordinance of the Town of Appleton, Maine**

## **Section 1. TITLE**

This Ordinance shall be known as the "Lot Specification and Building Permit Ordinance of the Town of Appleton Maine".

## **Section 2. PURPOSE**

The purpose of this Ordinance is to preserve the rural and residential character of the town, to promote the maintenance of safe and healthful living conditions, to preserve and protect the natural environment and scenic beauty of the area, to protect existing residential developments.

## **Section 3. APPLICABILITY**

This Ordinance shall apply to all structures, including manufactured and mobile housing, within the town of Appleton. Projects governed by the Wireless Telecommunications Facility Siting Ordinance and the Town of Appleton, Maine Wind Energy Facility Ordinance are exempt from the height restrictions of this ordinance, but the rest of this ordinance applies to those projects.

## **Section 4. AUTHORITY**

This Ordinance is adopted pursuant to the Home Rule Powers as provided for in Article VIII Part 2, section 1 of the Maine Constitution and [30-A MRSA § 3001](#).

## **Section 5. SPECIFICATIONS**

1. Lot Size. No building shall be constructed, enlarged, located or relocated on a lot of less than one acre.
2. Frontage. No building shall be constructed, enlarged, located or relocated on a lot with road frontage of less than One Hundred Fifty (150) continuous feet, when said lot is located on a public way or on a street within a subdivision. This requirement does not apply to lots accessed by a private driveway or right of way.
3. Setback. No structure shall be placed on a lot with a front setback of less than twenty-five feet (25) from the public or private right of way or sixty (60) feet from center of the public or private traveled road. Setback of structure from side or rear lot lines shall be no less than twenty-five (25) feet.



4. Height. No structure shall exceed a height of thirty four (34) feet from the average grade to the roof top. Barns and silos used for agricultural purposes, and church steeples, are exempt.

## Section 6. PERMITS

1. No building or addition to a building shall be erected, nor shall any structure, mobile, manufactured, or permanent, be located in the Town of Appleton, without a building permit being obtained from the Code Enforcement Officer by the builder or owner, prior to the commencement of construction or placement.
2. No shelter, RV or camper shall be placed on a lot for purpose of occupation or human habitation for more than fourteen (14) consecutive or thirty (30) cumulative days in a six (6) month period without a building permit obtained from the Code Enforcement Officer. This does not apply to licensed campgrounds.
3. No structure, mobile home or manufactured home shall be placed on a lot for the purpose of storage for more than fourteen (14) consecutive or thirty (30) cumulative days in a (6) month period without a building permit obtained from the Code Enforcement Officer.
4. Building permit applications are available at Town Office. Applications for building permits shall include the following information:
  - (a) Name and address of the owner and the builder of the building, structure or shelter-(either permanent or mobile).
  - (b) Location of lot, including Registry of Deeds book and page numbers, town tax map and lot numbers, and a sketch of the lot showing all dimensions, names of abutting property owners, location of existing and proposed structure or shelter, distance of proposed structures from center line of road or traveled way, property lines of the lot, and any lake, pond, river, stream or wetland.
  - (c) Dimensions of proposed structures, including square feet, building height and number of stories.
  - (d) Proposed use of structure(s).
  - (e) Proposed water supply (if applicable).
  - (f) Proposed sewage disposal system and copy of plumbing permit (if applicable).
  - (g) Copy of Soil Test validation and name of tester (if applicable).
  - (h) Name of approved subdivision (if applicable).
  - (i) Copy of Entrance Permit (if applicable).
  - (j) Estimated cost of improvement.
  - (k) Selected characteristics of the proposed structure.
5. All fees for Building Permits shall be paid to the Town of Appleton in accordance with the fee schedule as established by the Select Board.

6. Exemption: Exempt from this building permit requirement shall be any building not greater than one story in height and with a footprint no larger than 100 square feet. An addition which then makes a building exceed 100 square feet triggers a permit for the entire building. Once a building exceeds 100 square feet any addition requires a permit.  
**NOTE: This exemption applies only to the permit. All other requirements of the ordinance, including setbacks, apply.**

7. Time Limit: If activity as described in a building permit is not commenced within one year of issuance of the permit accompanied by substantial continuation of building activity, the building permit shall be considered void and a new permit must be obtained.

### **Section 7. SEPARABILITY**

In the event that any sections, subsections, or provisions of this Ordinance shall be declared by any competent court to be invalid, such decision shall not be deemed to affect the validity of any other sections, subsections or provisions of this ordinance.

### **Section 8. CONFLICT WITH OTHER ORDINANCES, ETC.**

Whenever the requirements of this Ordinance are at variance with the requirements of other lawfully adopted codes or ordinances, the most restrictive or those imposing the more restrictive standards shall govern.

### **Section 9. ENFORCEMENT**

It shall be the duty of the Code Enforcement Officer of the Town of Appleton to enforce the requirements of this Ordinance. If this Ordinance is being violated, the Code Enforcement Officer shall notify in writing by registered mail, return receipt requested, the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. A copy of such notices and receipts shall be maintained as a permanent record in the Municipal Office by the Code Enforcement Officer.

### **Section 10. LEGAL ACTIONS**

When the above action does not result in the correction or abatement of the violation, the Selectmen of Appleton, upon notice from the Code Enforcement Officer, are hereby authorized and directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce provisions of this Ordinance in the name of the Town of Appleton in accordance with the provisions of [30-A MRSA § 4452](#)

### **Section 11. FINES**

Any person who continues to violate any provision of this Ordinance after receiving written notice of such violations shall be subject to a fine of not less than One Hundred Dollars (\$100.00) nor more than Two Thousand Five Hundred Dollars (\$2,500.00) for each violation, in accordance with 30-A M.R.S.A. § 4452. Each day such a violation is continued may be counted as a separate offense.

### **Section 12. AMENDMENTS**

This Ordinance may be amended by a majority vote at a regular or special town meeting. Amendments may be initiated by a majority vote of the Planning Board, by request of the Board of Selectmen to the Planning Board or by petition directed to the Selectmen containing a number of signatures at least equal to 10% of the votes cast in the last gubernatorial election in the town. The

Planning Board shall conduct a public hearing on any proposed amendment at least fourteen (14) days in advance of the Town meeting.

### **Section 13. APPEALS**

If the Code Enforcement Officer disapproves an application or grants approval with conditions that are objectionable to the applicant or any abutting landowner or any aggrieved party, or when it is claimed that the provisions of this Ordinance do not apply, or that the true intent and meaning of this Ordinance has been misconstrued or wrongfully interpreted, the applicant, an abutting landowner, or aggrieved party may appeal the decision of the Code Enforcement Officer in writing to the Board of Appeals within thirty (30) days of the Code Enforcement Officer's decision. The Board of Appeals may reverse the Code Enforcement Officer's decision after holding a public hearing and may grant a variance as defined herein. Public hearings shall be held in accordance with 30-A MRSA § 2691.

### **Section 14. NON-CONFORMING BUILDING AND STRUCTURES**

The use of a building or structure, existing before the effective date of the Lot Specification Ordinance adopted 11/4/1986 or subsequent amendment thereto for provisions found there or the Building Permit Regulations adopted 12/01/1987 or subsequent amendment thereto for provisions found there, may continue although the building or structure does not conform to the provisions of this Ordinance. A non-conforming building or structure may be repaired, maintained or improved. The structure may be enlarged without a variance provided that:

- a) The enlargement does not exceed the height standards of the Ordinance.
- b) The enlargement itself meets the setback requirements, or is no closer than the non-conforming structure to the right-of way or center of the road, or the side or rear lot lines.
- c) If any portion of the structure is less than the prescribed minimum setback requirements from the right- of -way or center of the road, side or rear lot lines, the structure shall not be expanded in volume by 30% or more during the lifetime of the structure.

### **Section 15. NON-CONFORMING LOTS**

A non-conforming lot of record as of the effective date of the Lot Specification Ordinance adopted 11/4/1986 or amendment thereto, may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot size and frontage can be met. Variances relating to setback or other requirements not involving lot size or frontage shall be obtained by action of the Board of Appeals.

### **Section 16. EFFECTIVE DATE**

The effective date of this ordinance or any amendment thereto shall be the day immediately following adoption at a regular or special town meeting. The effective date of this ordinance is June 9, 2010. A copy of this ordinance and any amendment hereto shall be filed with the town clerk, according to the requirements of State Law, and shall be accessible to any member of the public.

### **Section 17. ABROGATION**

This ordinance repeals and replaces the Lot Specification Ordinance of the Town of Appleton, Maine (adopted 11/04/1986) and the Building Permit Regulations for the Town of Appleton (adopted 12/01/1987).

## **Section 18. DEFINITIONS**

**Aggrieved Party** - A person whose land is directly or indirectly affected by the granting or denial of a permit or variance under this Ordinance, a person whose land abuts land for which a permit or variance has been granted, or a group of five or more citizens of the Town of Appleton who represent an interest adverse to the granting or denial of such permit or variance.

**Building** – Any permanent structure, having one or more floors and a roof, which is used for the housing or enclosure of persons, animals or property.

**Commenced** – Activity shall be considered to be commenced when any work beyond the state of excavation, including but not limited to the pouring of a slab or footings, the installation of piles, the construction of columns or the placement of a manufactured home on a foundation, has begun.

**Frontage** – The length of the lot line that runs along the road or way used to access the lot.

**Setback** – An open area extending the entire width of the lot and extending into the lot at a right angle to such depth as specified. Such area shall be unoccupied and unobstructed by any building or structure from the ground upward.

**Shelter** – Any permanent or temporary structure to protect persons, animals or property.

**Structure** – Anything constructed or erected which requires location on the ground or attached to something having a location on the ground, but not including a tent, fence or vehicle.

**Unnecessary or undue hardship** –This clause requires the following conditions inclusive:

- A. The land in question cannot yield a reasonable return unless a variance is granted,
- B. The need for a variance is due to the unique circumstances of the property and not the general conditions in the neighborhood,
- C. The granting of a variance will not alter the essential character of the locality **AND**
- D. The hardship is not the result of action taken by the applicant or a prior owner.

**Variance** - A relaxation of the terms of this Ordinance where such variance would not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of this Ordinance would result in unnecessary or undue hardship. A financial hardship shall not constitute grounds for granting a variance. The crucial points of variance are undue hardship as defined in

Title 30-A M.R.S.A., Section 4353-4 and unique circumstances applying to the property. A variance is not justified unless both elements are present in the case.

**NOTE:**

The following amendments were made to the Lot Specification Ordinance which was adopted 11/4/1986:

9/9/2004- Special Town Meeting – Article #2 – Section 13. Non-conforming buildings and structures

6/13/2006- Annual Town Meeting- Article #33-Section 14. Non-conforming lots

6/10/2009- Annual Town Meeting- Article #29-Section 12. Appeals

6/10/2009- Annual Town Meeting- Article #30- Section 13. Non-conforming buildings and structures

The following amendments were made to the Building Permit Regulations Ordinance which was adopted 12/1/1987:

3/18/1989- Annual Town Meeting – Article #12 – Adjusting fees

6/21/1995- Special Town Meeting- Article #25-Numerous changes

6/18/2005- Annual Town Meeting- Article #36-Adjusting fees

The following amendments were made to the Lot Specification and Building Permit Ordinance of the Town of Appleton, Maine adopted June 9, 2010:

6/15/2011 - Annual Town Meeting – Article #31 – Section 3. – Applicability

6/13/2012 - Annual Town Meeting – Article #39 – Section 18 – Definitions

6/13/2018 - Annual Town Meeting – Article # 32-Section 6-Permits #5 Fees

A True Attest Copy:

Pamela Smith

Date: June 13, 2018

**TOWN OF APPLETON, MAINE**  
**MINING ORDINANCE**

**Adopted by the Town of Appleton    June 11, 2002**

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**TOWN OF APPLETON, MAINE**  
**MINING ORDINANCE**

**ARTICLE I – TITLE & PURPOSE**

**§1 Title**

This Ordinance shall be known and may be cited as *the Town of Appleton, Surface and Subsurface Mineral Extraction Ordinance*, or by its short title of *Town of Appleton Mining Ordinance* and will be referred to herein as “this Ordinance.”

**§2 Purpose**

The purpose of this Ordinance is to put into law minimum removal, and reclamation standards, and municipal procedures intended to regulate the removal, processing and storage of topsoil, loam, rock, flat rock, sand, gravel, metallic minerals, or other similar materials. These standards and procedures are intended to protect the public health, safety, and general welfare; and to minimize the adverse impact of extraction to the Town, abutting property owners, citizens of the Town, and wildlife and natural resources by:

- A. Preserving and protecting surface and groundwater quality and quantity for current and future use of the town and/or its residents.
- B. Preserving the value of property and its future ability to be an asset to the town and its residents.

**ARTICLE II – AUTHORITY, APPLICABILITY & ADMINISTRATION**

**§1 Authority**

This Ordinance is enacted pursuant to Home Rule Powers as provided for in Article VIII-A of the *Constitution of the State of Maine* and under the authority granted to the Town by the statutes of the State of Maine, Title 30-A M.R.S.A., Section 3001.

**§2 Administration**

The provisions of this Ordinance shall be administered by the Town of Appleton Planning Board and enforced by the Town of Appleton Code Enforcement Officer (CEO) and Selectmen.

**§3 Effective Date**

This Ordinance shall be effective upon its adoption by vote of the eligible voters of the Town of Appleton, Maine in Town Meeting

**§4 Applicability**

- A. The provisions of this Ordinance shall apply to all mineral extraction activities within the boundaries of the Town of Appleton, Maine, except as provided in Article III of this Ordinance. This applies to all extraction activities described in Article I which are
  - 1. formerly inactive, now active;
  - 2. active and unpermitted by the Town;
  - 3. new or proposed; and

4. expansions of the above, and mineral extraction activities previously permitted by the town, except as provided in Article III of this Ordinance.
  5. handling, processing, or other accessory uses.
- B. Inactive is defined as mining extraction that has ceased for 48 consecutive months prior to the passage of this Ordinance, in any areas where mining extraction activity had previously occurred. As long as no mining extraction activity recurs in the affected area, or on contiguous land under a common scheme of development, the inactive area shall remain exempt from this ordinance. If mining extraction activity begins again in the inactive area or contiguous land in the same ownership or under common scheme of development, the new area shall be subject to this ordinance. Any application submitted to the Planning Board, for any portion of the affected area, shall be classified for size, and treated as if it included all the previously exempt unreclaimed inactive area.
  - C. Active and unpermitted mining extraction activity is active mining extraction without a permit by the Town. This activity is subject to the entire ordinance; and shall be classified for size, and treated as if it included all affected areas, including contiguous land under common scheme of development with mining extraction activity, and inactive land.
  - D. The owner or operator of any active unpermitted mineral extraction activity shall within 90 days from the effective date of this ordinance submit an application pursuant to this ordinance.
  - E. Any owner or operator of an active operation that has not applied for a permit within 90 days from the effective date of this ordinance or received an extension for good cause from the Planning Board shall be in violation of this ordinance.

### **ARTICLE III – EXEMPTIONS**

§1 This ordinance shall not apply to the following:

- A. Mineral extraction activities that affect less than 1 acre of surface area of the entire property, that is active or unreclaimed, and the removal or handling of less than 1,000 cubic yards of material in 12 consecutive months.
- B. Storage or Stockpiles of winter abrasives (sand) used for the maintenance of private or public roads. This applies to the stockpile or storage area itself and not any associated mineral extraction activity or area;
- C. Removal or filling of material for all improvements incidental to construction, alteration or repair of a structure, town or state roads, or in the landscaping incidental thereto;
- D. Construction of farm and fire ponds and normal agricultural operations;
- E. Inactive areas where previous mining had last occurred at least 48 months prior to the adoption of this ordinance,
- F. Activities presently permitted by the Town, if an annual compliance inspection is required by the Town; and
- G. Mineral Extraction activities that are operating under permit of the State of Maine Department of Environmental Protection’s performance standards for mineral extraction activities.

*[NOTE: Non compliance may trigger an application or amendment which would require compliance with this ordinance.]*

**ARTICLE IV – MINERAL EXTRACTION ACTIVITY REVIEW**

**§1 Application**

The size, scale, number of copies, and other administrative details, are to be as specified by the ordinance. Prior to the establishment, continuation or expansion of a mineral extraction activity, an applicant shall apply for an approved mineral extraction Town permit. The application shall contain the following information, where applicable, and any other information that may be required by Article V of this Ordinance:

- A. Name, address and telephone number of the applicant, and the name, address and telephone number of the owner of the property, if different from the applicant.
- B. Verification of the right title or interest the applicant has in the property; and a copy of the deed(s) of the property together with copies of all covenants, deed restriction easements, rights of way, or other encumbrances, including but not limited to liens and mortgages currently affecting the property.
- C. Site Plan and application shall include the following:
  - 1. The date the plan was prepared with the name, address and telephone number of the person or company that prepared such.
  - 2. Scale is to be no more than 100 feet or less than 40 feet per inch. All dimensions to be marked in feet or decimals of a foot, north arrow shown, and paper size 24" by 36".
  - 3. Contour lines showing elevations in relation to mean sea level at appropriate intervals to show the effect on the land of existing and proposed grades for areas proposed to be excavated or filled. Contour intervals shall be a maximum of 5 feet.
  - 4. Boundaries of the tract of land showing lot lines, abutting lots, within 1,000 feet as defined by the Land Use Ordinance and illustrated on the Town of Appleton Tax Assessor's Maps, with total acreage of the whole parcel(s) indicated, and the Town of Appleton Tax Assessor's map and lot number(s); the names of all the property owners within 1,000 feet of any line, as determined by the Appleton Tax Records, shall be shown. The Planning Board may require a boundary survey of the property by a licensed surveyor if the boundaries are in question.
  - 5. Location of existing and proposed mineral extraction activities and structures on the property.
  - 6. Approximate location of residences on properties within 1,000 feet of the proposed activity.
  - 7. Location and identification of existing public and private streets, roadways and rights-of-way on or abutting the property.
  - 8. Location of proposed access road to the mineral extraction activity from public roadways.
  - 9. Location of all setbacks, buffers, and conservation areas, and protected natural resources.
  - 10. Location and arrangement of proposed parking and loading areas and their appurtenant drives and maneuvering areas.
  - 11. Location of existing and proposed utilities and easements, such as sanitary sewage, water supply, and electricity on the property.
  - 12. Location, intensity, type, size and direction of all outdoor lighting.
  - 13. Location and size of signs and all permanent outdoor fixtures such as fences, gates, utility poles.
  - 14. Location and type of existing and proposed berms, fences, hedges, and tree lines.

15. Location of existing natural drainage ways and proposed storm drainage facilities, including dimensions of culverts, pipes, etc. If any portion of the mineral extraction activity is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation shall be delineated on the plan.
  16. Location of existing wells:
    - a. within 1,000 feet of the proposed activity, if 5 acres or more; or
    - b. within 500 feet of the proposed activity if less than 5 acres; and all wells on the parcel itself.
  17. Location of proposed hazardous material storage areas including but not limited to fuel storage and handling, and washdown areas.
- D. Name of the proposed manager of operations.
  - E. An estimate of the average daily traffic during periods of operation projected to be generated by the activity to show that the minimum standards in Article V will be met and a traffic impact narrative, if required, as stated in Article V of this ordinance.
  - F. A narrative description of the surface and ground water impacts, including protection plans and the identification of any significant mapped aquifers.
  - G. Information and a map showing Soils Conditions on the site of the proposed mineral extraction activity. For subsurface sewage disposal proposed, the information shall include evidence of soil suitability according to the standards established in Article V of this Ordinance. The Site Plan shall show the location of soil test areas.
  - H. A soil erosion and sedimentation control plan, prepared in accordance with the standards contained in the latest revision Best Management Practices (BMP's) as established by the State.
  - I. A "Preservation of Natural and Historic Features" map if required by Article V of this Ordinance.
  - J. A reclamation plan showing the final grades and re-vegetation plan, and any phasing of the plan.
  - K. A narrative description of the impact on the wildlife habitat, and the location of any deer yard or other significant wildlife habitat designated by Maine Dept. of Inland Fisheries and Wildlife, including any proposed mitigation.
  - L. A narrative description of the present use of the parcel and property within 500 feet of the activity.
  - M. Estimated longevity of the operation, including phasing.
  - N. Proposed hours and days of operation.
  - O. Types and amounts of equipment to be used in the operation.
  - P. Proof of financial capacity, and/or capacity to obtain a Performance Guarantee as specified in Article VI, payable to the Town of Appleton, in an amount determined by the Planning Board as sufficient to cover the cost of any proposed reclamation, erosion control or other activities required by the Planning Board.
  - Q. A Spill Prevention, Control & Containment (SPCC) Plan. (See Article V §2-C).
  - R. Blasting Plan, if any.
  - S. Plan for screening the excavation activity from abutters and any public roads.

- T. All submissions made to any federal or state agency concerning the property.
- U. Pertinent information the planning Board may require to meet standards in Article V.

**§2 Alternate Submissions**

Activities that already have a valid DEP permit or a complete pending DEP application may submit the DEP application to the Planning Board subject to the Planning Board request for additional information on submissions above, not covered by the DEP application.

**§3 Waivers of submissions**

The planning board may grant waivers from specific application submission requirements, provided the applicant can demonstrate all of the following;

- A. A waiver would not be contrary to the public interest;
- B. A literal enforcement of submission requirements would result in unnecessary or undue hardship;
- C. The intent of the item being waived can be met in some other manner; and
- D. There will be no adverse impacts resulting from the waiver.

**§4 Application Procedures**

- A. Submission of Application for newly proposed, and for expansions of existing mineral extraction activities.
  - 1. Applications for mineral extraction activity permits shall be submitted to the Town Clerk or Chairman of the Planning Board who shall issue to the applicant a dated receipt.
    - a. Within 40 days from the date of receipt, the Planning Board shall notify the applicant in writing either that the application is complete or, if the application is incomplete, the specific additional material needed to make a complete application. Determination by the Planning Board that the application is complete in no way commits or binds the Planning Board as to the adequacy of the application to meet the criteria of this Ordinance. The Planning Board shall make a determination as to the completeness of the application. The applicant assumes all responsibility as to its completeness.
    - b. The application shall conform to the requirements or this ordinance and Planning Board requirements.
  - 2. The application shall be accompanied by a fee of  
*[NOTE: See Article V, § 1-B for explanation of the size symbols.]*
    - a. One hundred twenty five dollars (\$125.00) for **{I}** mineral extraction activity from 1 to 5 acres;
    - c. Two hundred fifty dollars (\$250.00) for **{L}** mineral extraction activity larger than 5 acres up to 30 acres; or
    - d. One thousand dollars (\$1,000.00) for **{X}** mineral extraction activity larger than 30 acres.
    - e. All checks, shall be made payable to the *Town of Appleton, Maine*. If a public hearing is deemed necessary by the Planning Board, an additional fee shall be required to cover the costs of advertising, postal notification and dissemination of information. Additional fees may be required by the Appleton Planning Board to cover the cost of reviewing the application as specified in Article V §5-H & Article IV §1-C(4)

B. Public Hearing

1. All mineral extraction activity larger than five acres shall require a hearing. A public hearing on the proposed mineral extraction activity shall be conducted in accordance with the procedures in Title 30-A, M.R.S.A., Section 2691(3)A-F.
2. Notice of the public hearing shall be advertised at least 10 days in advance in a local newspaper and posted in other places used for public notices, at the expense of the applicant. The notice shall contain a clear and concise statement of the matter to be addressed. At least 10 days before the public hearing, the Planning Board shall notify by mail the owners of properties within 1,000 feet of any boundary of the property for which application is being made. The owners of properties shall be considered to be persons listed on Town tax maps and lists.

C. Planning Board Decision on the Mineral Extraction Activity Application

1. The Planning Board shall, within forty days of a public hearing, or within eighty days of having received a complete application, if no hearing is held, or within such other time limit as may be mutually agreed to by said Planning Board and applicant, issue a decision denying or granting approval of the proposed mineral extraction activity or granting approval on such terms or conditions as it may deem advisable to satisfy the criteria contained in this Ordinance. In all instances, the burden of proof shall be upon the applicant. The Planning Board shall make a written finding regarding the applicant's Financial ability to satisfy the criteria contained in this ordinance and conditions of any permit.
2. Upon approval of the mineral extraction activity a majority of the Board shall sign all copies of the final site plan. The original shall be recorded by the applicant with the Knox County Registry of Deeds. One copy shall be retained by the applicant, one copy shall be retained by the Planning Board, one copy shall be filed with the Tax Assessor, and one copy shall be filed with the Code Enforcement Officer. The Planning Board shall maintain a permanent record of their action on the mineral extraction activity. **Any plan not recorded within 90 days after approval, with the Knox County Registry of Deeds shall be null and void.**
3. Approval by the Planning Board of a mineral extraction activity plan shall not be deemed to constitute or be evidence of any acceptance by the Town of Appleton, Maine of any road, easement, or other open space shown on such plan.

D. Annual Compliance Inspections

1. The annual compliance inspection fee shall be  
[NOTE: See Article V, § 1-B for explanation of the size symbols.]
  - a. Twenty five dollars (\$25.00) for {I} mineral extraction activity 1-5 acres;
  - b. Fifty dollars (\$50.00) for {L} mineral extraction activity larger than 5 up to 30 acres;
  - c. Two hundred dollars (\$200.00) for {X} mineral extraction activity larger than 30 acres;
2. The annual compliance Inspection (ACI) shall be conducted by the CEO prior to the anniversary date of the permit. The CEO shall issue a *Report of Inspection Compliance* (RIC), provided he determines that the permit holder has not deviated from the approved plan. If the CEO determines that the permit holder has deviated from the approved plan, the CEO shall issue a *Report of Inspection Non-compliance* (RIN). Reports shall be written and provided to the Planning Board, the Selectmen, and permit holder. After receipt of the RIN, the Planning Board, after notice and hearing, pursuant to Article IV

§5-B, and a determination after hearing that a deviation from the approved plan has occurred, shall request that the CEO issue a *STOP WORK ORDER, EXCEPT FOR REMEDIAL ACTION*, until such time as compliance is achieved, or a time determined by the Planning Board lapses, which ever occurs first.

The CEO shall thereafter re-inspect the site to determine if compliance has been achieved. If he determines compliance has been achieved, he shall issue a RIC, as above. If he determines that compliance has not been achieved, he shall issue a Second Step Report of Non-compliance (SSRN). The permit holder shall again pay the fees, as required by this subsection for this second compliance inspection.

The Planning Board, after receipt of the SSRN, shall provide notice and hearing pursuant to Article IV §5-B, to determine whether the permit holder is in compliance with his approved permit; and if not, the Planning Board shall revoke the permit, and request that the Selectmen take remedial action, as is permitted by town ordinance or State law.

The applicant can terminate the process above at any time by demonstrating compliance with his approved permit at a subsequent compliance inspection, which he requests, and payment of inspection fees, followed by the issuance of a RIC by the CEO.

E. Operation Conditions and Limitations

Before any mineral extraction activity begins, the applicant shall apply for and receive all applicable permits as may be required by Town, state or federal regulations, laws or ordinances regulating such developments, including a Conditional Use Permit required by this Ordinance. Any violation of other permits necessary for operation and noted in the permit shall be considered a violation of this ordinance.

F. Expiration of Approval

Mineral Extraction Activity permits shall expire three years from the date of issuance unless the mineral extraction activity is started.

G. Plan Revisions after Approval

Plan revisions after approval shall be made as further provided for in Article VII §3 of this Ordinance.

H. Expert Witnesses and Opinions

In the event that the Planning Board requires expert opinions, advice or testimony during the course of reviewing the application, it will use due diligence to obtain and utilize free services from governmental or non-profit sources. Should the Planning Board be unable to obtain and utilize such services, it may require the applicant to pay for such services, after giving notice to the applicant of the name of the expert, the area of qualification of the expert, and the purpose for which the expert is required, and the approximate cost of the expert. The applicant shall be provided with an opportunity to meet with the Planning Board to arrange a schedule for payment of the costs. All costs for which notice is not given by the Planning Board shall be unreimbursable to the Planning Board. The applicant shall have the right to request a public hearing to determine if the experts, as noticed by the Planning Board, are necessary to a determination of any issue properly before the Planning Board, and if the approximate costs of the expert are reasonable. It will be the applicant's burden to prove that the requested expert is unnecessary, or that the cost is excessive. The applicant shall request the hearing within 10 days of the meeting, or such time as is agreed to by the Planning Board and the applicant.

I. Transfer of Mineral Extraction Activity Permit.

The permit holder shall not sell, lease, assign, or otherwise transfer the permit, or cause or

allow any other action where the purpose or consequence is to transfer any of the obligations of the permit holder as incorporated in the permit, except following the approval of the Planning Board. The Planning Board shall require that either the proposed new permit holder apply for a new permit; or the Planning Board may approve the transfer of the permit if it can be demonstrated that :

1. The terms and conditions of the permit and all applicable laws can and will be met.
2. The proposed transferee has the financial capacity and technical ability and intent to satisfy the terms of the permit.
3. The transfer of the permit or activities it allows will not cause or contribute to a violation of the law. In determining whether transfer of the permit will cause or contribute to a violation of the law, the Planning Board shall consider any prior violation, suspension, or revocation of a permit issued to the proposed transferee; and any other environmental enforcement history of the proposed transferee. The Planning Board may require the proposed transferee to present evidence of changed conditions or circumstances sufficient, in the judgment of the Planning Board, to warrant transfer of the permit, notwithstanding any prior violation, suspension, or revocation. The applicant shall provide the Planning Board as part of the request, the information (unless otherwise specified by the Planning Board) on the proposed transferee as required in Article IV §1 of this Ordinance. Proposed changes to the terms of the permit, including financial responsibility requirements, shall be considered a request for permit modification and processed accordingly. The Planning Board shall notify by mail all abutting property owners of all boundaries of the property prior to consideration for approval of the permit transfer application. The owners of properties shall be considered to be persons listed on Town tax maps and lists.

## **§5 Appeals and Variances**

### **A. Administrative Appeals**

1. Any person aggrieved by an action of the Planning Board pursuant to this Ordinance may file an application for appeal in writing within 40 days of the granting or denial of approval from the Planning Board. The notice of appeal shall state with specificity the exact portions of the Planning Board's Decision are being appealed, and the legal grounds for appeal. The appellant shall file this appeal with the Chairman of the Board of Appeals, who shall issue a dated receipt and who shall, within 7 days of the date of receipt, notify the applicant in writing that either the application is complete or, if the application is incomplete, the specific additional material needed to make a complete application.
2. The fee to accompany applications for appeal shall be twenty five dollars (\$25.00), lawful currency of the United States of America. All checks, money orders or bank drafts shall be made payable to the *Town of Appleton, Maine*. The applicant shall be required to cover the costs of advertising, postal notification and dissemination of information for the appeals hearing.
3. The Board of Appeals shall, upon complete Notice of Appeal of an aggrieved party and after public notice, hear appeals from determinations of the Planning Board in the administration of this Ordinance within 40 days of such application. The Appeals Board shall cause notice of the date, time and place of said hearing, the location of the proposed mineral extraction activity and the issues raise in the appeal, to be given in writing to the



appellant and published in a newspaper of general circulation in the Town of Appleton, Maine at least two times. The date of the first such publication shall be at least 7 days prior to the hearing. The Board of Appeals shall also cause written notice by mail or hand delivery of the hearing be given to the permit holder, the Selectmen, the Planning Board, the Code Enforcement Officer, and all property owners within 1,000 feet of the boundaries of the proposed mineral extraction activity at least 14 days prior to the date of the hearing. The Board of Appeals shall post notices in such public places as it would place notice of a Town Meeting.

4. If such application for appeal is not made within the stated time, the prior decision of the Planning Board shall be final.
5. Following such hearing, the Board of Appeals may reverse the decision of the Planning Board only upon a finding of fact that the decision of the Planning Board is clearly contrary to specific provisions of this Ordinance. The Board of Appeals shall render a decision in writing to the appellant and/or applicant, Planning Board Chairman, Code Enforcement Officer, and the Selectmen within 40 days of the appeal hearing.

B. Variances

1. The Board of Appeals may, upon written application and hearing as outlined in Article VI §4-B of this Ordinance grant a variance from the strict application of the dimensional requirements of this Ordinance, including lot sizes, setbacks, site distances, lot coverage by structures, sign requirements, and parking requirements only if the requirement of this Ordinance would result in undue hardship to the applicant, as defined in Article IV §5-B(2), below, of this Ordinance.
2. In order to find an undue hardship the Board of Appeals must find all of the following to grant a variance:
  - a. That the land in question cannot yield a reasonable return unless a variance is granted; and
  - b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and
  - c. That the granting of the variance will not alter the essential character of the locality; and
  - d. That the hardship is not the result of action taken by the applicant or a prior owner.
3. Following the public hearing, as outlined in Article IV§4-B of this ordinance, the Board of Appeals shall render a decision to grant or deny a variance in writing to the applicant, the Planning Board, and selectmen, within 40 days of the appeal hearing.

C. Appeal to Superior Court

Any aggrieved party having proper standing may appeal any decision of the Appeals Board under this Ordinance to the Superior Court of Knox County, within 45 days of a written decision in accordance with Maine State Law.

## **ARTICLE V – MINIMUM DESIGN & PERFORMANCE STANDARDS**

### **§1 General Requirements**

- A. **Mineral extraction activities shall conform to all applicable State laws and local ordinances or regulations.**
- B. This Article details the specific application requirements for the submissions required in Article IV. Applicability is denoted by:
  - 1. **{A}** for all size projects;
  - 2. **{X}** for extra large size projects (over 30 acres);
  - 3. **{L}** for large size projects (larger than 5 acres up to 30 acres);
  - 4. **{I}** for intermediate size projects (1 acre up to 5 acres).

The owner and/or operator of a mineral extraction activity shall be responsible, both jointly and severally, for ensuring the maintenance of all infrastructure, structures and their sites.

- C. Mineral extraction activities in the Shoreland Zone shall be in accordance with the Shoreland Zoning Ordinance or this Ordinance whichever is stricter.
- D. The Planning Board shall consider the financial and technical ability of the applicant to complete all proposed activities in approval of this permit. The Planning Board may deny, modify, or revoke its approval if the applicant or agent is not in compliance with other Town or State permits for Mineral Extraction Activity.
- F. In all cases, the applicant shall have the burden of proof that all requirements, standards, and conditions of this Ordinance and subsequent approval are met.

### **§2 Performance Standards.**

- A. Erosion Sedimentation Control & Stormwater Management.
  - 1. **{A}** All projects.
    - a. Sediment may not leave the parcel or enter a Protected Natural Resource.
    - b. Topsoil stockpile must be stabilized and inspected as specified in Article V§2-B(1).
  - 2. Internally Drained projects.
    - a. **{A}** Land shall be restored and stabilized according to the Reclamation Plan.
    - b. **{L}{X}** A volume calculation shall be provided demonstrating that the area(s) will safely hold a volume of precipitation at least equal to that which may be expected in the area from the 25 year, 24 hour storm event for the region.
  - 3. Externally Drained Projects.
    - a. **{A}** If surface water flows out of and away from the proposed site during and after the site is excavated, the following should be provided to assure proper erosion control and prevent siltation of downstream waters. Temporary erosion control measures shall be included in the project design, such as hay bale barriers, silt fencing, and riprap. Plans shall show the location and installation details and include a description of the timing of installation, inspection and maintenance of erosion control measures.
    - b. **{I}{L}{X}** Additional information including:
      - i. A plan and narrative detailing specific erosion control measures; and

- ii. A site plan showing the pre-construction and post-construction contours, and if applicable, phased contours. The plan must show on and off site watershed boundaries and hydrologic surface water flow lines.
- c. {A} Sedimentation pond location and design, if any, shall be designed to the 25 year storm event and based on the U.S.D.A. Soil Conservation Service methodology contained in *TR-55*. The location and construction details of the pond shall be shown on the site plans

**B. Reclamation Plan**

The affected land must be restored to a condition or physical state that is either similar to and compatible with that which existed prior to any development, or encourages the productive use of the land. A reclamation plan is required for **ALL** activities according to the following specifications:

- 1. {A} Soil Stockpiling. Soil which is stripped or removed must be stockpiled for use in reclaiming disturbed land, unless it is demonstrated to the Planning Board that it is not needed for reclamation purposes. Soil stockpiles must be seeded, mulched, or otherwise stabilized. At least 4 inches of any previously stripped topsoil will be used for final cover.
- 2. {A} Regrading. Upon completion of the excavation, the side slopes must be regraded to a slope no steeper than 2.5 horizontal to 1 vertical, except that a steeper slope may be allowed, if a slope stability analysis is submitted showing that there will be no major failure or sloughing of slopes.
- 3. {A} Vegetative cover. Vegetative cover must be established on all affected land. Topsoil must be placed, seeded, and mulched within 30 days of final grading.
  - a. Vegetative material used in reclamation must consist of grasses, legumes, herbaceous, or woody plants or a mixture thereof. Plant material must be planted during the first growing season following the reclamation phase. Selection and use of vegetative cover must take into account soil and site characteristics such as drainage, pH, nutrient availability, and climate.
  - b. The vegetative cover is acceptable if within one growing season of seeding
    - i. the planting of trees and shrubs results in a permanent stand, or regeneration and succession rate, sufficient to assure a 50% survival rate; and
    - ii. the planting results in 90% ground coverage.
- 4. {A} Structures and roads. All structures and access, haul, or other support roads must be reclaimed once no longer used, unless reserved for future productive use of the land, as described in the reclamation plan.
- 5. Phased Reclamation. The site must be reclaimed in phases so that:
  - a. {L}{X} The working pit does not exceed 10 acres at one time and the area being actively mined does not exceed 5 acres at any time.
  - b. {I} The working pit does not exceed 3 acres at any time.
  - c. For guidance in planning and implementation of reclamation, see *Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices (March 1991), Section 10 Pit Reclamation*.

**C. Petroleum Usage {A}**

- 1. Spill prevention, control, and countermeasures are applicable to all size projects.

2. If any petroleum products or other materials with potential to contaminate groundwater are to be stored on the site, a Spill Prevention Control, and Countermeasures (SPCC) Plan shall be submitted. A SPCC Plan should be developed in accordance with DEP regulations, *Appendix A of CMR 378*.
3. Crankcase oil, hydraulic fluids, and similar products shall not be disposed of within the excavation area.
4. Any discharge or leak of petroleum product over a gallon shall be immediately reported to the Code Enforcement Officer. All discharges or leaks of any size shall be cleaned up promptly according to Best Management Practices.

D. Buffers and Setbacks {A}

Buffers and setbacks shall be shown on the site plans as follows:

1. Property Boundaries.

To minimize visual impacts and provide for wildlife, a 75 foot buffer shall be maintained from property boundaries. This buffer may be reduced to 25 feet with written permission of an abutting landowner; or may be eliminated between abutting properties provided:

- a. written permission is obtained, and
- b. erosion & stormwater control standards on both properties are met.

2. Existing Structures.

{A} A 300 foot buffer from the closest edge of an existing residence or business, or farm building used for livestock shall be maintained with all projects. This buffer may be reduced with written permission of the owner of the structure.

3. Protected Natural Resources.

{A} Unless covered in Article V §1-D above the following shall apply:

Unless authorized pursuant to the Natural Resources Protection Act, Title 38, M.R.S.A, Section 480-C no part of any extraction operation, including drainage and runoff control features shall be permitted within one hundred (100) feet of the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and within seventy-five (75) feet of the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland. Extraction operations shall not be permitted within seventy-five (75) feet of any property line, without written permission of the owner of such adjacent property.

4. Public Roads.

{A} A 150 foot buffer from the closest edge of the shoulder of a public road shall be maintained with all projects. A 50 feet wide undisturbed natural vegetated area, closest to the road, shall be maintained within the buffer, except for any access road entrance.

E. Road Design, Circulation and Traffic {A}

1. The intersection of any road within the development area and an existing public road shall meet the following standards:
  - a. The desired angle of intersection shall be 60° to 90°.
  - b. The maximum permissible grade within 75 feet of the intersection shall be 5%.
  - b. A minimum sight distance of 10 feet for every mile per hour of posted speed limit on the existing road shall be provided. Sight distances shall be measured from the driver's seat of a vehicle that is 10 feet behind the curb or edge of the shoulder line with the height of the eye 3 1/2 feet above the pavement and the height of object 4 1/4 feet.

- d. The center line of any road within the project intersecting an existing public road shall be no less than 125 feet from the center line of any other road intersecting that public road.
  - e. Turning lanes, traffic directional islands, frontage roads, and traffic controls shall be provided on public roads at the developer's expense, where necessary, in the opinion of the Appleton Road Commissioner, to safeguard against hazards to traffic or pedestrians, and/or to avoid traffic congestion.
  - f. All access/egress roads leading to or from the extraction site to paved public ways shall be treated with suitable materials to reduce dust and mud; and paved or otherwise hard surfaced for a distance of at least 200 feet from the paved public road.
2. Traffic impacts to be considered:
- a. Where mineral extraction activity traffic proposes to use town maintained roads, the activity scope must be suitable and appropriate to the projected daily traffic impacts as determined by the Appleton Road Commissioner.
  - b. The road giving access to the Mineral Extraction Activity and neighboring roads which can be expected to carry traffic to and from the Mineral Extraction Activity shall
    - i. have traffic carrying capacity; and
    - ii. if a Town road, be suitably improved if necessary by the applicant to accommodate the amount and types of traffic generated by the proposed mineral extraction activity as determined by the Appleton Road Commissioner. As a guide line the road commissioner should consider the following: No mineral extraction activity shall increase the volume to capacity ratio of any town road above 80%; nor reduce the road's Level of Service to "D" or below. Minimum travel surface width shall be 20 feet with 2 foot shoulders. On operations larger than 5 acres, the Planning Board may require an engineering impact study or road condition survey of the town road. The Planning Board may require mitigation for adverse impacts on Town roads.
3. Routing.
- Where necessary to safeguard against hazards to pedestrians and to avoid traffic congestion, or adverse impacts to Town roads, alternative routing may be required.

F. Ground Water Impacts

The following requirements apply to {A} projects unless otherwise noted.

1. Assessment Submitted. The Planning Board must find that the Mineral Extraction Activity will not cause an adverse impact to ground water quality and quantity before approving any application.
2. Groundwater buffer.

To provide an adequate buffer for ground water and allow for filtration of impurities from surface water, extraction shall not be any closer than 5 feet above the maximum seasonal high water level unless an application has been submitted to and approved by the State of Maine Department of Environmental Protection for excavation below the seasonal high groundwater table and all other minimum design and performance standards and application requirements per this ordinance are met. The applicant shall provide documentation of the groundwater table. The Planning Board may require monitoring of groundwater levels and quality to assure there are no adverse impacts to any water supplies or wells within 500 feet of the site.

3. Water Supply buffer.

A 300 foot separation must be maintained between the limit of excavation and any pre development private drinking water supply. A 1,000 foot separation must be maintained between the limit of excavation and any well or spring which qualifies as a public drinking water supply. The Planning Board may require larger buffers from water supplies, if they find that a hazard is shown to exist due to the Mineral Extraction Activity.

4. Water Use.

A mineral extraction activity must not withdraw more than 5,000 gallons of ground water per day, unless a hydrogeologic study is submitted by a qualified professional.

5. Standards for Acceptable Ground Water Impacts

- a. Projections of ground water quality shall be based on the assumption of drought conditions (assuming 60% of annual average precipitation).
- b. No mineral extraction activity shall increase any contaminant concentration in the ground water to more than one half of the Federal Primary Drinking Water Standards. No mineral extraction activity shall increase any contaminant concentration in the ground water to more than the Federal Secondary Drinking Water Standards.
- c. If ground water contains contaminants in excess of the primary standards, and the mineral extraction activity is to be served by on-site ground water supplies, the applicant shall demonstrate how water quality will be improved or treated, if necessary.

G. Preservation of Natural and Historic Features; {A}

The scenic, historic or environmentally sensitive areas or any areas identified in the Comprehensive Plan or by the Maine Natural Areas Program as rare and irreplaceable areas shall be preserved.

H. Sanitary Standards {A}

1. Sewage Disposal

All water carried sewage shall be disposed of by sewage systems meeting the requirements of the *State of Maine Plumbing Code*.

2. Solid Waste Disposal

No solid waste, including stumps and grubblings, shall be placed stored or disposed of in the mineral activity site unless it meets the requirements of the rules and regulations of by the Maine Department of Environmental Protection. The storage, collection and disposal of refuse in the mineral extraction site shall not create health hazards, rodent or insect breeding areas, accident or fire hazards, air pollution, or surface or ground water pollution.

I. Signs {A}

Any signs must comply with the standards of other applicable ordinances.

J. Noise {A}

The applicant shall demonstrate that noise from the operation does not exceed 75 dbA at the property line, except for emergency or safety equipment such as back up beepers. Normal operation times shall be specified, so as not to constitute a nuisance to residents in the neighborhood, including but not limited to daily starting and ending times, and operations on weekends.

K. Hours of Operation {A}

The hours of operation for any and all activities shall not be earlier than 7:00 AM and not later than 7:00 PM Monday through Saturday. Depending on the location of the site the hours of operation may be revised by the planning board.

**§3 Performance Standards - Rock Mining/Extraction Operations**

Because of the intensity of the type of operation, in addition to the performance listed in Section 2 of this ordinance, rock mining operations shall conform to the following:

- A. The maximum limit of material that may be extracted per year is 5,000 cubic yards.
- B. A surveyed profile of the material on site to be excavated must be calculated and submitted with the permit application and the amount extracted per year confirmed by the annual inspection of the CEO.

**ARTICLE VI – PERFORMANCE GUARANTEES**

The following applies to {A} sized projects unless otherwise noted.

**§1 Types of Guarantees**

With submittal of the application for Final Plan approval, the applicant shall provide one of the following performance guarantees for an amount adequate to cover the total costs of all required reclamation, taking into account the time-span of the phasing, or reclamation schedule and the inflation rate for costs:

- A. Either a certified check payable to the Town or a savings account or certificate of deposit naming the Town as owner, for the establishment of an escrow account; or
- B. B.A performance bond payable to the Town issued by a surety company, approved by the Selectmen; or
- C. An irrevocable letter of credit from a financial institution establishing funding for the construction or reclamation of the mineral extraction activity, from which the Town may draw if reclamation or construction is inadequate, approved by the Selectmen; or
- D. {I} May propose alternatives to the above.

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

**§2 Contents of Guarantee**

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

**§3 Escrow Account**

A cash contribution to the establishment of an escrow account shall be made by either a certified check made out to the municipality, the direct deposit into a savings account, or the purchase of a certificate of deposit. For any account opened by the permit holder, the municipality shall be named as owner or co-owner, and the consent of the municipality shall be required for a withdrawal. Any

interest earned on the escrow account shall be returned to the developer unless the municipality has found it necessary to draw on the account, in which case the interest earned shall be proportionately divided between the amount returned to the developer and the amount withdrawn to complete the required improvements.

**§4 Performance Bond**

A performance bond shall detail the conditions of the bond, the method for release of the bond or portions of the bond to the developer, and the procedures for collection by the municipality. The bond documents shall specifically reference the mineral extraction activity for which approval is sought.

**§5 Letter of Credit**

An irrevocable letter of credit from a bank or other lending institution shall indicate that funds have been set aside for the complete reclamation of the mineral extraction activity and may not be used for any other project or loan.

**§6 Phasing of Development**

The Board may approve phased performance guarantees, when a mineral extraction activity is approved in separate and distinct phases.

**§7 Performance Guarantee Review**

Any performance bond or proof of financial capacity shall be reviewed no later than 30 days before the expiration of the guarantee, and adjusted if necessary. The applicant may also request adjustments in the guarantee.

**§8 Release of Guarantee**

Prior to the release of any part of the performance guarantee, the Board shall determine to its satisfaction, in part upon the report of a certified Engineer and/or whatever other agencies and departments may be involved, that the reclamation meets or exceeds the design requirements for that portion of the reclamation for which the release is requested.

**§9 Default**

If upon inspection, CEO or other inspecting official finds that any of the required reclamation has not been performed in accordance with the approved plans and specifications, he shall so report in writing to the Municipal Officers, the Board, and the permit holder and guarantor. The permit holder shall have 30 days unless otherwise specified by the CEO, to remedy any insufficiency noted. Thereafter, Municipal Officers shall take any steps necessary to enforce the guarantee and remedy the insufficiencies.

**§10 Improvement Guarantees**

Performance guarantees may be required for all off site improvements required by this Ordinance, when the Board finds that the scale of the improvements warrants.

**ARTICLE VII – ENFORCEMENT AND INSPECTIONS .**

**§1 Reclamation Certification**

- A. ~~{L}{X}~~ Upon completion of reclamation or a reclamation phase, a written certification signed by a professional engineer registered in the State of Maine shall be submitted to the Chairman



of the Planning Board at the expense of the applicant, certifying that the reclamation is in compliance with the approved plans.

**§2 Violations**

- A. No mineral extraction activity plan shall be recorded in the Registry of Deeds until a Final Plan has been approved and signed by the Planning Board in accordance with this Ordinance.
- B. No person, corporation or other legal entity may sell or offer to sell any materials in a mineral extraction activity site which has not been approved by the Planning Board and recorded in the Registry of Deeds.
- C. No public utility shall serve any mineral extraction activity site for which a final Plan has not been approved by the Planning Board and recorded in the Registry of Deeds.
- D. No development of the infrastructure of a mineral extraction activity site may begin until Final Plan approval by the Planning Board and recording in the Registry of Deeds. Development includes the grading and construction of roads, utility installations, and construction of buildings or structures.
- E. The Appleton Planning Board may after notice and hearing, withhold approval or revoke any previous approvals, given to any applicant, owner or operator who is found in violation of this ordinance, until the violations are corrected.
- F. Any operation that is in violation of other approvals (such as DEP *Intent to Comply* or DEP permits) covering the same operation shall be deemed in violation of approvals granted under this ordinance, in that all other approvals are necessary for approvals under this ordinance to be valid.

**§3 Mineral Extraction Plan Amendments After Approval**

No changes, erasures, or modifications shall be made in a Final Plan after approval has been given by the Planning Board unless the plan is first resubmitted and the Planning Board approves any modifications. The applicant is not required to go through the complete review process of an amendment to an existing mineral extraction activity, unless, in the judgment of the Planning Board the amendment substantially alters the character of the original mineral extraction activity, or unless the change constitutes a new mineral extraction activity. If an amended Final Plan is recorded without complying with this requirement, it shall be null and void. The Planning Board may record a revocation of a previous recorded document in the Registry of Deeds.

**§4 Enforcement**

- A. The Code Enforcement Officer or the Selectmen of the Town of Appleton, Maine, shall enforce this Ordinance and are authorized to institute legal proceedings to enjoin violations of this Ordinance.
- B. If the Code Enforcement Officer finds violation of any provision of this ordinance or failure to comply with any order, permit, approval, condition or other final decision or action of the Planning Board that constitutes a substantial and immediate danger to the health, safety or welfare of any person(s), or property or environment of the Town of Appleton, Maine, said Town may initiate immediate injunction proceedings to abate or correct such violations.
- C. In any action to enforce any provision of this ordinance where the Town of Appleton, Maine prevails, said Town shall be awarded reasonable attorney fees, expert witness fees, and costs unless the court finds that special circumstances make the award of these fees and costs

unjust. If the defendant is the prevailing party, the defendant may be awarded reasonable attorney fees, expert witness fees, and costs provided by court rule.

**§5 Penalties**

- A. Any person, firm or corporation, being the owner or having control or use of any mineral extraction activity in violation of any of the provisions of this Ordinance or terms or conditions of any order, permit or approval or final decision of the Planning Board shall be subject to a civil penalty due and payable to the Town of Appleton, Maine of not less than one hundred dollars (\$100.00) for each day said violation exists after notification of violation and not more than twenty-five hundred dollars (\$2,500.00) for each day said violation exists or twice the economic benefit resulting from the violation, whichever is greater. If the same person has been convicted of a violation of this ordinance within the previous two years, the maximum penalty is twenty five thousand dollars (\$25,000.00) for each day said violation exists or twice the economic benefit resulting from the violation, whichever is greater.
- B. In setting the penalties, the court shall consider but is not limited to the following:
  - 1. Prior violations by the same person;
  - 2. The degree of environmental damage that can not be abated or corrected;
  - 3. The extent to which the violation continued following an order to stop;
  - 4. The extent to which the Town of Appleton, Maine contributed to the violation by providing incorrect information or failing to take timely action; and
  - 5. Whether penalties have been imposed by another governmental agency for the same incident(s).
- C. Payment of any penalty shall be made within thirty (30) days in cash or by certified check drawn on a recognized financial institution, made payable to the Town of Appleton, Maine in an amount equal to the full amount of the penalty.
- D. If the maximum penalty amount of Article VII §5-A of this ordinance is held void or invalid it is the intent of the Town of Appleton, Maine that provisions of Title 30-A, M.R.S.A. Section 4452 be given full force and effect and that the maximum penalty amounts authorized by such provision apply to violations of any order, permit, approval or final decision of the Planning Board, or any provision of this ordinance.

**ARTICLE VIII – SEVERABILITY & CONFLICT**

**§1 Severability**

Should any section of this Ordinance be declared by the courts of the State of Maine or by the courts of the United States to be invalid, such decisions shall not invalidate any other section or provision of this Ordinance.

**§2 Conflict with other Ordinances**

This Ordinance shall in no way impair or remove the necessity of compliance with any other rule, regulation, bylaw, permit or provision of law. Where this Ordinance imposes a greater restriction upon the use of the land, buildings or structures, than any other rule, regulation, bylaw, permit or provision of law, the provisions of this Ordinance shall prevail.

**ARTICLE IX – AMENDMENT OF THIS ORDINANCE**

**§1 Initiation of Amendment**

An amendment to this Ordinance may be initiated by:

- A. The Planning Board provided that a majority of the Board has so voted; or
- B. Request of the Selectmen to the Planning Board; or
- C. Written petition to the Selectmen bearing signatures of registered voters of the Town of Appleton, Maine numbering at least ten percent (10%) of the number who voted in the last gubernatorial election.

**§2 Adoption of Amendment**

All proposed amendments to this Ordinance shall be referred to the Planning Board for their recommendation. The Planning Board may hold a public hearing on any proposed amendment. Within thirty days of receiving a proposed amendment, the Planning Board shall make known their recommendation to the Selectmen and to the Town. After receiving the recommendation of the Planning Board, the amendment shall be voted on by the voters of the Town of Appleton, Maine at a Town Meeting, a majority vote being required for adoption.

**ARTICLE X – OTHER PROVISIONS**

**§1 Public Access to Information**

Except as expressly made confidential by law, the Board shall make all documents and records available to the public in accordance with the Maine Freedom of Access Law (1 MRSA § 401 et seq.). The Board shall also keep confidential those documents which may remain confidential pursuant to the Maine Freedom of Access Law. The Board shall make determinations on confidentiality and any person aggrieved by such determination may appeal to a court in accordance with State Law. The Board shall withhold disclosure of such information pending a final judicial determination on any claim of confidentiality. A policy for inspecting and copying documents may be established by the Board, including, but not limited to, a reasonable charge for copying costs.

**§2 Adjoining mineral extraction activity under common scheme of development**

Adjoining mineral extraction activity under common scheme of development separated by less than 500 feet of unaffected land shall be required to fulfill all the requirements as established in this ordinance for the total size of the extraction area, including the adjoining site.

**Right of Entry Onto Land**

The CEO shall have the right of entry onto any mineral extraction activity site at reasonable times and reasonable notice.

**ARTICLE XI – DEFINITIONS & REFERENCES**

**§1 Construction of Language**

In general, all words and terms used in this Ordinance shall have their customary dictionary meanings. More specifically, certain words and terms shall be described below.

**§2 Relationship to Other Town Ordinances**

Where there is a conflict between the language contained in this Ordinance and any other Town ordinances, the stricter language shall apply for purposes of this Ordinance.

**§3 References to the Town**

All references in this ordinance to “Town,” “the Town,” “the Town of Appleton,” and to any board, official or officer, unless clearly defined otherwise, shall be construed to be references to The Town of Appleton, Maine, an incorporated municipality in the County of Knox, State of Maine and its municipal boards, officials and officers.

**§4 References to Other Documents**

All references in this ordinance to any document, chapter, handbook, or other external reference, shall be construed to be references to said documents and their successor documents, as they may be amended or replaced from time to time by other materials.

**§5 Definitions**

**Affected land:** The land area from which the overburden will be or has been removed; land upon which stumps, spoil, or other solid waste will be or has been deposited; and any storage area that will be or has been used in connection with the development, except a natural buffer strip.

**Body of Water:** Shall include the following:

- A. *Pond or Lake* - any inland impoundment, natural or man-made, which collects and stores surface water.
- B. *Stream or River* - a free flowing drainage outlet, with a defined channel lacking terrestrial vegetation, and flowing water for more than three months during the year.

**Environmentally sensitive areas:** Wetlands, swamps, wildlife habitat areas delineated by the Dept. of Inland Fisheries and Wildlife (IF&W), prime agricultural areas, areas with steep slopes, areas with poorly drained soils, and flood plain areas (subject to a 100 year flood). Also to include Protected Natural Resources.

**Expansion of operation:** Excavation operations that exceed the approved area or footprint.

**Extra Large Mineral extraction operations:** {X} Excavations that are 30 acres or more.

**Ground water:** The water beneath the surface of the ground, consisting largely of surface water that has seeped down; the source of water in springs and wells.

**Handling, Processing, or other Accessory Uses:** Any washing, screening, crushing, mixing or storage of sand, gravel, stone, rock, clay, topsoil, or any other material of any kind from either on or off site; to include: any washing or screening operations: concrete mix or asphalt batching plants; blasting or mining of material; storage of material from off site; disposal, placing, or storing of any materials that are not going to be used in any process or production in conjunction with the extraction activity; or ore concentration processes.

**Intermediate Mineral extraction operations:** {I} Excavations that are between 1 and 5 acres.

**Large Mineral extraction operations:** {L} Excavations that are more that 5 acres and less than 30 acres.

**Mineral extraction activity:** Any excavation or removal, handling or storage of sand, gravel, borrow, rock, clay, minerals, or topsoil to including but not limited to sand or gravel pits, clay pits, borrow pits, quarries, mines, and topsoil mining or removal.

**Mineral Extraction Site or Area:** All of the land area disturbed or otherwise developed for the extraction, removal, processing, or storage of sand, gravel, clay, minerals, stone, rock, or topsoil; including any access roads and cleared areas adjacent to a pit or excavated area

**Normal High Water Mark of Inland Waters:** That line of the shores and banks of nontidal water which is apparent because of the different character of the soil or the vegetation due to the prolonged action of the water. Relative to vegetation, it is that line where the vegetation changes from predominantly aquatic to predominantly terrestrial (by way of illustration, aquatic vegetation includes but is not limited to the following plant and plant groups: water lily, pond lily, pickerel weed, cattail, wild rice, sedges, rushes, and marsh grasses, and terrestrial vegetation included but is not limited to the following plants and plant groups, Upland grasses, aster, lady slipper, wintergreen, partridgeberry, sarsaparilla, pines, cedars, oaks, ash, alders, elms, and maples). In places where the shore or bank is of such character that the high water mark shall be estimated from places where it can be determined by the above method.

**Protected Natural Resource:** Wetlands, significant wildlife habitat, fragile mountain areas, freshwater wetlands, bog, marsh, rivers, streams or brooks, as the terms are defined in applicable state law.

**Reclamation:** The restoration or continued maintenance of the area of land affected by mining under a reclamation plan. This may include but is not limited to, grading and shaping of the land, the creation of lakes or ponds, the planting of forests, the seeding of grasses, legumes, or crops for harvest, or the enhancement of wildlife and aquatic resources.

*[NOTE: Any inactive area, may be considered for Tax assessing purposes as active, if the area has not been reclaimed according to the Standards of this ordinance. Currently, reclaimed land has a lower assessed value.]*

**Reclamation Plan:** A plan which depicts how the project will be restored, or maintained, after excavation is complete. Such a plan usually includes final grading and re vegetation plans, of any given phase.

**Road:** Public and private owned ways such as alleys, avenues, boulevards, highways, roads, streets, lanes and other rights-of-way, as well as areas on mineral extraction activity plans designated as rights-of-way.

**Setback:** The horizontal distance from a lot line or referred location to the nearest part of a structure or activity.

**Setback from Water:** The horizontal distance from the normal high water mark to the nearest part of a structure or activity.

**Small Mineral extraction operations:** Excavations that are less than 1 acre in size; or extract less than 1,000 cubic yards within any 12 consecutive month period.

**Surface water:** any water flowing on the surface, either channelized or by sheet flow including, but not limited to, rivers, streams, brooks, ponds, lakes and any swamp, marsh, bog or other contiguous lowland where water is periodically ponded on the surface.

**Waiver:** A relaxation of the terms of the ordinance where such a waiver would not be contrary to the public interest, where owing to existing conditions or operations, a literal enforcement of this Ordinance would result in an unnecessary or undue hardship, and where the intent of the ordinance or item being waived can be met in some other appropriate manner, as determined by the Planning Board.

**Working pit or area:** the extraction area including side slopes and adjoining areas with overburden removed, excluding roads.

**ARTICLE XII – CERTIFICATION OF ADOPTION**

I hereby attest that this is a true copy of the Mining Ordinance for the Town of Appleton, Maine duly adopted on \_\_\_\_\_ .

\_\_\_\_\_  
Appleton Town Clerk

\_\_\_\_\_  
Appleton Town Seal

\_\_\_\_\_  
Date

Annual Town Meeting – 06/10/03 – Article #3 – Amended, Article V

Annual Town Meeting – 06/19/04 – Article #39 – Amended, Article III

Annual Town Meeting – 6/10/08 – Article #4 – Amended, Article III

**Town of Appleton  
Mobile Home Park Ordinance  
Appleton, Maine**

Adopted by the Town of Appleton **JUNE 13, 2007**

**Mobile Home Park Ordinance**  
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## Article I Title and Purpose

§1 Title: This Ordinance shall be known as the Town of Appleton Mobile Home Park Ordinance and will be referred to herein as "This Ordinance".

§2 Purpose: The purpose of this Ordinance is to ensure the comfort, convenience, safety, health and welfare of the people of the Town of Appleton, Maine, to protect the environment and to promote the development of an economically sound and stable community; to establish standards for mobile homes parks & the mobile homes in mobile home parks.

## Article II Authority

This ordinance is enacted under the authority granted to the Town by the constitution and statutes of the State of Maine and pursuant to Title 30-A, M.R.S.A. sec. 3001 and Title 30-A, M.R.S.A. sec. 4358.

## Article III Administration, Applicability and Fees

§1 Administration: This Ordinance shall be administered by the Town of Appleton Planning Board, and enforced by the Town of Appleton Code Enforcement Officer and the Selectmen. The requirements of this Ordinance shall be in addition to the requirements of any other applicable statute, ordinance or regulation, including but not limited to subdivision law.

§2 Applicability: The provisions of this Ordinance shall apply to all mobile home parks, and the mobile homes located within mobile home parks, and the expansion of any existing mobile home parks, as defined by this Ordinance, located within the town of Appleton.

§3 Fees: The Selectmen and the Planning Board shall be responsible for setting the appropriate fees.

## Article IV Severability & Conflict

§1 Severability: Should any article of this Ordinance be declared by the courts of the State of Maine or by the courts of the United States to be invalid, such decisions shall not invalidate any other article or provision of this Ordinance.

§2 Conflict with Other Ordinances: Whenever the requirements of this Ordinance are in conflict with the requirements of any other rule, regulation, ordinance or statute, the more restrictive requirement shall prevail, unless otherwise prohibited by state law or expressly provided for in this Ordinance.

## Article V Pre-Application

### §1 Pre-Application Meeting

- A. Prior to formal submission of a Mobile Home Park application, the applicant shall appear informally to discuss the proposed Mobile Home Park at the regular meeting of the

- Planning Board.
- B. At this meeting the applicant shall submit:
    - 1. Proof of standing
    - 2. The Pre-Application Sketch Plan: This sketch may be a free hand drawing based on the Town Tax Map.
  - C. On-site Inspection: At the pre-application meeting, the Planning Board Chairman shall schedule an on-site inspection of the land to be subdivided. The date set shall be scheduled so that at least a majority of the board members and the applicant will be in attendance. In addition the chairman may also request that the code enforcement officer attend the on-site inspection. The Board or its designated agent shall, at its earliest convenience and normally within 45 days, make an on-site inspection. If any conditions such as snow exist to prevent an adequate inspection, in the opinion of the Board, the applicant shall be notified in writing. Any time limits for review shall be extended accordingly until an on-site inspection can be made. The applicant shall place "flagging" at the center line of any proposed roads prior to the on-site inspection.
  - D. Purpose of Pre-application Meeting and On-site Inspection: The purpose of both the pre-application meeting and on-site inspection is to give the Planning Board a clear understanding of what is proposed. Subsequent filing of a formal Mobile Home Park Application must be within twelve (12) months of the pre-application meeting.
  - E. Applicants Rights not vested: Submissions and attendance at the pre-application meeting shall create no binding commitments between the applicant and the Planning Board. It shall not be considered the initiation of the review process for the purposes of bringing the plan under the protection of Title 1, M.R.S.A., §302.

## Article VI -Mobile Home Park Review

§1 Provisions: No mobile home park or any expansion or enlargement or modification of an existing park shall be approved or used for a mobile home park unless the provisions of this Article and the other provisions contained in this ordinance are fully complied with. The applicant must prove that the proposed mobile home park or expansion will meet the ordinance provisions.

The proposed Mobile Home Park:

- A. Will not result in undue water or air pollution. In making this determination, the Board shall at least consider the elevation of the land above sea level and its relation to flood plains; the nature of soils and sub-soils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; and the applicable state and local health and waste resource regulations;
- B. Will not result in unhealthful or unsafe conditions or erosion or sedimentation to any point down gradient from said park;
- C. Has sufficient water available for the reasonable foreseeable needs of the Mobile Home Park; Will not cause an unreasonable burden on an existing water supply, if one is to be utilized; Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result;
- D. Will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads existing or proposed;
- E. Will provide for adequate solid and sewage waste disposal;
- F. Will not have an undue adverse effect on the scenic or natural beauty of the area,

- aesthetical, historic sites or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;
- G. Is in conformance with the Comprehensive Plan.
  - H. Applicant must demonstrate that he has adequate financial and technical capability to meet the ordinance review and operational standards and to construct and maintain all the improvements to the property as shown by the application and site plan as required by the board;
  - I. Will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water either on or down gradient from the property proposed to be developed;
  - J. Will not be situated, in whole or in part, within 250 feet of any pond, lake, or river.
  - K. Will not be situated in a flood-prone area as described and based on the Federal Emergency Management Agency's Flood Boundary and Flood-way Maps and Flood Insurance Rate Maps;

## §2 Preliminary Plan Procedure

### A. Procedure

1. Within twelve months of the pre-application meeting the applicant shall submit a formal application for approval of a preliminary plan with proof of the appropriate fee paid. If any application is not submitted within this period of time the Planning Board shall require a new pre-application meeting.
2. Upon receiving an application for preliminary plan approval, at a regularly scheduled Planning Board meeting, the Planning Board shall issue the applicant a dated receipt.
3. Within forty five (45) days from the receipt of an application by the Planning Board at a regularly scheduled Planning Board meeting the Planning Board shall notify the applicant in writing that the application is either complete or incomplete. If the application is incomplete the Planning Board shall notify the applicant, in writing, of the specific steps necessary to make a complete application. This paragraph shall not, however, preclude the Board from later requiring further information as reasonably requested by the Board during its review process.
4. Within forty five (45) days from the receipt of an application by the Planning Board at a regularly scheduled Planning Board meeting, the applicant shall notify all property owners located within five hundred (500) feet of any bound of the property upon which the mobile home park is proposed to be located. The notification shall specify the location and general description of the project. The notification shall involve notification by mail with return receipt showing proof of notification which said return receipt shall be provided to the Board. The burden shall fall to the applicant to determine persons who are entitled to notification under this ordinance and to assure and demonstrate that notification has occurred. No hearing relative to any pending application shall be undertaken until at least ten days have passed from the receipt of written notification by such said property owners.
5. A public hearing shall be held within forty-five (45) days of a complete preliminary plan application together with proof of notification to abutters as herein above set forth. The Planning Board shall give notice of the date, time and place of such a hearing to be published twice in a local newspaper with the date of the first publication at least seven (7) days prior to the hearing. The Board may delay the public hearing as herein provided in order to comply with the time limits hereby established.
6. Within forty five (45) days after a public hearing, the Planning Board shall approve, approve with conditions, or disapprove the preliminary plan. In issuing its decision the Planning Board shall state in writing the conditions of such approval, specifically:
  - a. The changes it will require in the final plan.

- b. The amount of the performance guarantee that the Planning Board will require for Final Plan Approval.
- 7. Approval of a preliminary plan shall not constitute approval of a Final Plan, rather it shall be viewed as a guide in the preparation of the Final Plan.
- 8. Prior to the approval of a Final Plan, the Planning Board may require additional changes in the Final Plan as the result of substantial new information.
- 9. The Planning Board may request an additional site inspection to view the location of lot markers, test pits and proposed roads prior to Final Plan Approval.
- 10. The Applicant shall notify the Road Commissioner and the Fire Chief of the proposed Mobile Home Park including the number of lots proposed and length of roadways. The Planning Board shall require written comments from these officials (to be obtained by the applicant) on the facilities to service the proposed mobile home park.

#### B. Preliminary Plan Submission Requirements

The complete preliminary plan submission requirements shall consist of the following information:

1. THE MOBILE HOME PARK APPLICATION: The applicant shall complete and sign seven (7) copies of the Mobile Home Park Application.
2. FEE: The applicant shall submit proof of the appropriate preliminary plan fees paid.
3. MAP: The preliminary plan shall be accompanied by seven (7) copies of a map showing the relationship of the proposed Mobile Home Park to adjacent properties and the surrounding area. The map shall show all the area within five hundred (500) feet of any property line of the proposed Mobile Home Park. The map shall show:
  - a. Names of existing and proposed roads.
  - b. Names of all owners of property abutting or directly across a road from the proposed Mobile Home Park.
  - c. The outline of the proposed Mobile Home Park together with its probable access and an indication of the future street system.
4. PRELIMINARY PLAT PLAN: The preliminary plan shall be drawn to a scale of not more than one hundred (100) feet to the inch. Where practical the sheet size of the drawings shall be 24" x 36" (inches) or as required by the Knox County Registry of Deeds. In addition, seven (7) copies of a plan reduced to a size of 11" x 14" (inches) shall be submitted. The following information shall either be shown on the preliminary plan or accompany the application for preliminary approval.
  - a. Proposed name of mobile home park along with name, address and telephone number of the applicant, and the name, address and telephone number of the owner of the property, if different from the applicant.
  - b. The date the plan was prepared with the name, address and telephone number of the person or company that prepared such.
  - c. Scale of the drawings submitted and compass rose; all dimensions to be marked in feet or decimals of a foot.
  - d. Contour lines showing elevations in relation to mean sea level at appropriate intervals to show the effect on the land of existing and proposed grades for areas proposed to be excavated or filled.

- e. Boundaries of the tract of land showing lot lines, abutting lots as illustrated on the Town of Appleton Tax Assessor's Maps, with total acreage indicated and the Town of Appleton Tax Assessor's map and lot number(s). The Planning Board may require a survey by a licensed surveyor.
- f. Verification of right, Title or interest the applicant has in the property.
- g. A copy of the deed or deeds of the property together with copies of all covenants or deed restrictions, easements, rights-of-way, or other encumbrances currently affecting the property.
- h. Location of existing and proposed mobile homes and other structures.
- i. Location of buildings or other structures on abutting properties within 500 feet of the property lines of the proposed park including names and addresses of abutters.
- j. Location of existing public and private streets, roadways and rights-of-way.
- k. Location of proposed access roads to the mobile home park from public streets or roadways.
- l. The following disclaimers shall be attached to the plan to be recorded at the Registry of Deeds and filed with the municipality as well as any other notes or conditions of approval:
  - 1. "The land within the park shall remain in a unified ownership and the fee to lots or portions of lots shall not be transferred."
  - 2. "No dwelling unit other than a mobile home shall be located within the park."
  - 3. To any plan showing existing or proposed private roads: "All roads in this mobile home park so marked shall remain private roads to be maintained by the owner of the Mobile Home Park."
- m. An estimate of the average daily traffic projected to be generated by the park and a traffic impact analysis.
- n. Location and arrangement of proposed off-street parking and loading areas and their appurtenant drives and maneuvering areas.
- o. Location of existing and proposed pedestrian walkways.
- p. Location of existing and proposed utilities and easements therefore, including sanitary sewerage, water supply, and electricity.
- q. Location, intensity, type, size and direction of all outdoor lighting.
- r. Location and size of signs and all permanent outdoor fixtures.
- s. Location and use of areas proposed for outdoor recreation or for reserved open space.
- t. Location and type of existing and proposed fences, hedges and other screening.
- u. Location of existing natural drainage ways and proposed storm drainage facilities, including dimensions of culverts, and pipes.
- v. An analysis of ground water impact as required by Article VII, §7 of this Ordinance.
- w. Information about Soils Conditions on the site of the proposed mobile home park. For subsurface sewage disposal, the information shall include evidence of soil suitability. The Site Plan shall show the location of soil test pit areas and natural wet areas located by a certified hydrologist.
- x. A soil erosion and sedimentation control plan.
- y. Natural and Historic Features as defined by the Comprehensive Plan.
- z. Projects require a phosphorus control analysis and plan to be submitted for review and approval.

### §3 Final Plan Review Procedures

#### A. Procedure

1. Within six (6) months after approval of a preliminary plan, the applicant shall submit the Final Plan and supporting documentation for Final Plan Review. If the final plan and the performance guarantees provided in Article XVI are not provided within six months after the approval of the preliminary plan, the application shall be null and void without prejudice and require the applicant to resubmit and to pay all application fees anew.
2. Fee: The applicant shall submit proof of the appropriate Final Plan fees paid.
3. Prior to submittal of the Final Plan application, the following approvals shall be obtained, in writing, where appropriate.
  - a. Maine Department of Human Services, if the applicant proposes to provide a central water supply system.
  - b. Maine Department of Human Services, if a centralized or shared subsurface sewage disposal system is to be utilized.
  - c. Maine Manufactured Housing Board (If Applicable)
  - d. Department of Environmental Protection (If Applicable)
4. The applicant, or his duly authorized representative, shall attend a regularly scheduled meeting of the Planning Board to discuss the Final Plan.
5. Upon determination that a complete application has been submitted for review, the Planning Board shall issue a dated receipt to the applicant.

#### B. Submission Requirements –Final Plan

The Final Plan shall be submitted in two (2) reproducible, stable based transparent originals, and three (3) copies. After Planning Board approval, one original will be recorded at the registry of deeds and one filed at the Town Office. The plans shall be drawn to a scale of not more than one hundred (100) feet to the inch. Where practical the sheet size of the drawings shall be 24" x 36" (inches). Space shall be reserved on the drawing for the conditions the Planning Board may impose, and the endorsement of the Planning Board. In addition, seven (7) copies of the Final Plan reduced to a size of 11" x 14" (inches) shall be submitted. The application for Final Plan approval shall include the following:

1. All of the information presented on the preliminary plan and location map and any amendments thereto as required by the Planning Board.
2. The name, registration number and seal of the land surveyor, architect, engineer, or planning consultant who prepared the plan.
3. Road names, pedestrian ways, lot easements, open spaces and other areas to be reserved for or dedicated to public use and/or ownership.
4. Sufficient data acceptable to the Code Enforcement Officer to readily determine the location, bearing and length of every street line, lot line, easement, and boundary line and to reproduce such lines upon the ground. Where practical, these should be tied to reference points previously established.
5. A copy of such covenants or deed restrictions, if any, as are intended to cover all or part of the tract.
6. Construction drawings showing a cross section of proposed roads and storm drains shall be included as required by the Planning Board.
7. Lots and blocks within the subdivision numbered in accordance with Article X.
8. Permanent monuments at all outside corners of the tract and referenced in the Final

Plan. In addition, the outside perimeter of the property is to be clearly marked for complete identification of land boundaries.

9. A performance bond or guarantee in a form and amount meeting the requirements of Article XVI to secure the completion of all improvements required by the Planning Board, and written evidence that the Board of Selectmen has approved the bond or guarantee.

### C. Final Plan Approval and Filing

1. No Final Plan shall be approved by the Planning Board as long as the applicant is in default on a previously approved plan.
2. Upon findings of fact and determination that all standards in 30A M.R.S.A., § 4404 and all pertinent regulations have been met, and upon voting to approve the Mobile Home Park, the Planning Board shall sign the Final Plan. The Planning Board shall specify in writing its findings of facts and reason for any conditions or denial. Any Mobile Home Park not recorded in the Registry of Deeds, by the applicant, within ninety (90) days of the date upon which the plan is approved and signed by the Planning Board shall be deemed void and shall require re-submission, review and approval.
3. No changes, erasures, modifications, or revisions shall be made in any Final Plan after approval has been given by the Planning Board and endorsed in writing on the Plan, unless the revised Final Plan is first submitted to, and the Planning Board approves any modifications. Plan revisions after approval shall be made as further provided for in Article XV, §3 of this Ordinance. The Planning Board shall make findings that the revised plan meets the standards of 30A M.R.S.A. §4404, and these regulations. In the event that a plan is recorded without complying with this requirement, it shall be considered null and void, and the Code Enforcement Officer shall institute proceedings to have the Plan stricken from the records of the Registry of Deeds
4. The approval by the Planning Board of a Mobile Home Park plan shall not be deemed to constitute or be evidence of any acceptance by the Town of any road, easement, or other open space shown on such plan. When a park, playground, or other recreation area shall have been shown on the plan to be dedicated to the Town, approval of the Plan shall not constitute an acceptance by the municipality of such areas. The Planning Board shall require the Plan to contain appropriate notes to this effect. The Planning Board may also require the filing of a written agreement between the applicant and the Municipal Officers covering future deed and Title, dedication, and provision for the cost of grading, development, equipment, and maintenance of any such dedicated area.
5. Failure to commence construction of the required roads and other improvements within the Mobile Home Park within one (1) year of the date of approval and signing of the Plan or failure to complete all work within two (2) years of the date of approval shall render the Plan null and void and a new application must be made. The board may extend, for good cause, by 6 months the time limits set forth in this subsection on a \_ majority vote. Upon determining that a Mobile Home Park's approval has expired under this paragraph, the Code Enforcement Officer shall have a notice placed in the Registry of Deeds to that effect. Construction of the proposed mobile home park is subject to the provisions of Article XV, §3 of this Ordinance.
6. Limitation on Units. After the effective date of this Ordinance as stipulated in Article XX of this Ordinance, mobile homes as defined by Article XIX of this Ordinance, and mobile homes meeting the safety standards contained in Article VII of this

Ordinance, may be located in a mobile home park sited within the Town of Appleton, Maine. Excepting any units legally sited as of the effective date of this Ordinance as stipulated in Article XX of this Ordinance, no mobile home which fails to meet the definition of mobile contained in Article XIX of this Ordinance, or which otherwise fails to meet the safety standards contained in Article VII of this Ordinance, travel trailers, units not suitable for year-round occupancy, or site built home shall be located in a mobile home park situated within the Town of Appleton, Maine.

7. Expert Witnesses and Opinions. The Planning Board shall retain the right to call, cite, reference, examine, cross-examine, quote, or question any authority, expert, professional, or experienced individual of their choice whom, in their sole opinion, may have pertinent information regarding the proposed mobile home park, at any time during the approval process or during the construction process; all costs of such shall be borne by the developer of the proposed mobile home park. Consultation shall be sought first from sources without fees.

## Article VII -Minimum Design & Performance Standards

### §1 General Requirements

- A. Where a developer elects to create a mobile home park, the park plan shall show lots, and the developer shall demonstrate that the development standards described herein are met.
- B. The owner or operator of a mobile home park shall be responsible for ensuring the maintenance of all infrastructures, structures and their sites, including snow removal from all park roads and walkways and sanding where required. Park management shall conform to Maine State Laws. Compliance with this Ordinance shall not exempt the park owner, developer, or manager from complying with other applicable local, state, and federal codes and regulations.
- C. No mobile home may be sited in an approved mobile home park within the Town of Appleton, Maine without either a bill of sale indicating the name, address, dealer registration number and sales tax certificate number of the person who sold or provided the mobile home to the buyer locating such housing in this Town; or evidence of certification of payment of the sales tax in accordance with Title 36, M.R.S.A., Section 1760, Subsection 40 and Title 36, Article VIII, Sec 1. M.R.S.A., Section 1952-B. A copy of each document required for each housing unit shall be filed with the Code Enforcement Officer prior to the siting of said unit.
- D. Mobile Home parks shall be located in areas defined by the comprehensive plan

### §2 Lot width and lot coverage requirements.

- A. Lots served by individual on-site (lot) subsurface waste water disposal systems:  
Min. lot area: 20,000 square feet  
Min. lot width: 100 feet.
- B. Lots served by centralized on-site (park) subsurface waste water disposal systems:  
Min. lot area: 12,000 square feet  
Min. lot width: 100 feet.
- C. The overall density of any park served by any subsurface wastewater disposal system shall not exceed one dwelling unit per 20,000 square feet of total park area.
- D. The overall density of the mobile home park shall be the combined area of its mobile home lots plus the sum of the area required for road rights-of-way, the area required for



- buffer strips, the open space area as defined in Article VII, §5 of this Ordinance.
- E. Where lots front on a curved right-of-way or are served by a driveway, the frontage requirement shall be measured in a straight line perpendicular to the mobile home.
  - F. All buildings on the mobile home lot, including accessory buildings and structures, but excluding open decks and parking spaces, shall not cover more than 50% of the lot area.

### §3 Unit Setback Requirements

- A. The following minimum unit setbacks shall apply to all homes and accessory buildings located in the mobile home park:
  - Side setback 20 feet
  - Front setback 20 feet
  - Rear setback 10 feet
- B. Where bordering a public road, all structures shall meet the minimum setbacks of the Site Plan review and Lot Specification Ordinances.

### §4 Buffering & Screening

A mobile home park shall have a buffer strip not less than 50 feet in width provided along all property boundaries. No structures, streets, or utilities may be placed in the buffer strip except that they may cross a buffer strip to provide services to the park. Within 25 feet of any property line, and within the buffer strip, visual screening shall be provided. The visual screening shall consist of fences, berms, landscaping (such as shrubs or trees) and natural vegetation. This screening shall effectively screen at least 80% of the homes from view of the adjacent property and shall be maintained throughout the life of the project.

### §5 Open Space Reservation

- A. An area no less than 10% of the total area of the mobile home park lots shall be reserved as open space. The area reserved as open space shall be maintained and used for its stated purpose. Parking space, driveways and streets and buffer areas are not considered useable open space but community recreation buildings, pools and courts are considered as open space.
- B. At least 50% of the reserved open space shall have slopes less than 5%, shall not be located on poorly or very poorly drained soils, and shall be accessible directly from roads within the park.
- C. All developed open space shall be designed and landscaped for the use and enjoyment of the park residents and shall be maintained for their long term use. Plans for these areas shall be submitted in the approval application.
- D. To the maximum extent possible, undeveloped open space shall be left in its natural state. Improvements to make trails for walking and jogging or to make picnic areas are permitted. Plans for these areas shall be submitted in the approval application.
- E. The developer shall submit as part of the application, a copy of that portion of the proposed mobile home park rules and a plan which specify how the open space is to be used and maintained and what conditions are to apply to its use. The plan shall specify the areas to be dedicated to open space, recreation, and storage.
- F. Reserved open space shall not be used for future mobile home lots.

### §6 Roads

- A. Roads which the applicant proposes to be dedicated as public ways shall be designed and constructed in accordance with the standards for roads as detailed in the street design and

- construction standards as defined in Section VI.-A. of the Subdivision Ordinance.
- B. Road Design, Circulation, Traffic Impacts and Parking Areas within a park shall be designed by a Professional Engineer, registered in the State of Maine.
  - C. Roads which the applicant proposes to remain private ways shall meet the following minimum design standards:
    - 1. Roads: Minimum right of way width: 23 feet and minimum width of traveled way: 20 feet
    - 2. Cul-de-sac turnarounds shall have minimum property line radii of 66 feet and 55 foot outer edge of travel way radii, exclusive of any parking areas.
    - 3. All roads shall be built to acceptable engineering standards and with a professional engineer's seal as required by the Manufactured Housing Board.
    - 4. The park owner or management shall be responsible for snow removal and sanding on all park roads.
  - D. Any mobile home park expected to generate average daily-traffic of 200 trips per day or more shall have at least two road connections with existing public roads. Any road within a park with an average daily traffic of 200 trips per day or more shall have at least two road connections leading to existing public roads, other roads within the park, or other roads shown on an approved subdivision plan.
  - E. No individual lot within a park shall have direct vehicular access onto an existing public road.
  - F. The intersection of any road within a park and an existing public road shall meet the following standards:
    - 1. The desired angle of intersection shall be 90°. The minimum angle of intersection shall be 75°.
    - 2. The maximum permissible grade within 75 feet of the intersection shall be 2%.
    - 3. A minimum sight distance of 10 feet for every mile per hour of posted speed limit on the existing road shall be provided. Sight distances shall be measured from the driver's seat of a vehicle that is 10 feet behind the curb or edge of shoulder line with the height of the eye  $3\frac{1}{2}$  feet above the pavement and the height of object  $4\frac{1}{4}$  feet.
    - 4. The center line of any road within a park intersecting an existing public road shall be no less than 125 feet from the center line of any other road intersecting that public road.
    - 5. No connection of a road within a mobile home park shall be made with any public road unless the public road meets or exceeds the standards for roads in Article VII of the Subdivision Ordinance.
    - 6. Where necessary to safeguard against hazards to traffic or pedestrians and to avoid traffic congestion, turning lanes, traffic directional islands, frontage roads, and traffic controls shall be provided on public roads at the developer's expense.
  - G. The application shall contain an estimate of the average daily traffic projected to be generated by the park. Estimates of traffic generation shall be based on the Trip Generation Manual, 1987 edition, published by the Institute of Transportation Engineers. If the park is projected to generate more than 400 vehicle trip ends per day, the application shall also include a traffic impact analysis, by a professional engineer registered in the State of Maine with experience in transportation engineering.
  - H. Each lot shall be legibly marked for identification, and easily accessible to emergency vehicles, permitting fire apparatus and emergency vehicles to approach within 100 feet.

- I. All roads within the park and connecting with roads outside the park shall be marked with signs designating their name, appropriate safety and stop signs, and with appropriate lines and markings painted on them, all approved by the Road Commissioner. Proposed road names shall be approved by the Planning Board and be consistent with the Town of Appleton Addressing Ordinance.
- J. On-street parking shall be prohibited within the park unless an eight foot parking lane is provided in addition to the road width requirements of Article VIII, §6-B of this Ordinance, in which case on-street parking may be permitted on the side of the road where the parking lane is located.
- K. For each mobile home lot there shall be provided and maintained at least two hard surfaced off-street parking spaces. Each parking space shall contain a minimum of 200 square feet with minimum dimensions of 10 feet by 20 feet. The spaces shall meet the hard surface standards set forth as ‘Sidewalk’ surfaces defined in Section VI.A.4. of the Subdivision Ordinance.

### §7 Ground Water Impacts

#### A. Assessment Submitted

Accompanying the application for approval of any mobile home park shall be an analysis of the impacts of the proposed mobile home park on ground water quality. The hydro geological assessment shall be prepared by a certified geologist or professional engineer registered in the State of Maine, experienced in hydrology and shall contain at least the following information.

- 1. A map showing the basic soils types.
- 2. The depth to the water table at representative points throughout the mobile home park.
- 3. Drainage conditions throughout the mobile home park.
- 4. Data on the existing ground water quality, either from test wells in the mobile home park or from existing wells on neighboring properties.
- 5. An analysis and evaluation of the effect of the mobile home park on ground water resources. The evaluation shall, at a minimum, include a projection of post development nitrate-nitrogen concentrations at any wells within the mobile home park, at the mobile home park boundaries and at a distance of 1000 feet from potential contamination sources, whichever is a shorter distance. For mobile home parks within the watershed of a lake, projections of the development's impact on groundwater phosphate concentrations shall also be provided.
- 6. A map showing the location of any subsurface wastewater disposal systems and drinking water wells within the mobile home park and within 300 feet of the mobile home park boundaries.

#### B. Standards for Acceptable Ground Water Impacts

- 1. Projections of ground water quality shall be based on the assumption of drought conditions (assuming 60% of annual average precipitation).
- 2. No mobile home park shall increase any contaminant concentration in the ground water to more than one half of the Primary Drinking Water Standards. No mobile home park shall increase any contaminant concentration in the ground water to more than the Secondary Drinking Water Standards.
- 3. If ground water contains contaminants in excess of the primary standards, and the mobile home park is to be served by on-site ground water supplies, the applicant shall demonstrate how water quality will be improved or treated.
- 4. If ground water contains contaminants in excess of the secondary standards, the mobile home park shall not cause the concentration of the parameters in question to exceed 150% of the ambient concentration.

C. Subsurface waste water disposal systems and drinking water wells shall be constructed as shown on the map submitted with the assessment. If construction standards for drinking water wells are recommended in the assessment, those standards shall be included as a note on the Plan.

#### §8 Conversion

No development or subdivision which is approved under this Ordinance as a mobile home park may be converted to another use or individual lots sold without the approval of the Planning Board, and meeting the appropriate lot size, lot width, setback and other requirements of the applicable ordinance.

#### §9 Preservation of Natural and Historic Features

The Planning Board shall require that the proposed park include a landscape and management plan that will show the preservation of scenic, historic or environmentally desirable areas or any areas identified in the Comprehensive Plan or by the Maine Critical Areas Program as rare and irreplaceable areas.

### Article VIII Safety Standards

The standards in Article VIII shall apply to all mobile homes built before June 15, 1976, Certified Mobile Homes, or any mobile homes not built according to the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Chapter 70, to be located in a mobile home park in the Town of Appleton, Maine. The park owner shall have the burden of proving to the Code Enforcement Officer that these standards are met.

#### §1 Building Standards

##### A. Exit Facilities -Exterior Doors

1. Homes shall have a minimum of two exterior doors located remote from each other.
2. Required egress doors shall not be located where a lockable interior door must be used in order to exit.
3. Doors may not be less than 12 feet from each other as measured in any straight line direction regardless of the length of the travel between doors.
4. One of the required exit doors must be accessible from the doorway of each bedroom without traveling more than 35 feet.
5. All exterior swinging doors in mobile homes shall provide a minimum door leaf dimension of 28 inches wide by 74 inches high. Notwithstanding this regulation replacement swinging doors that were installed prior to adoption of this ordinance measuring at least 28 inches in width by 72 inches in height shall not require replacement. All exterior sliding glass doors shall provide a clear opening of at least 28 inches wide by 72 inches high. Locks shall not require the use of a key for operation from the inside.

##### B. Exit Facilities -Egress Windows and Devices

Mobile homes shall have the following emergency egress facilities: Every room designed expressly for sleeping purposes, unless it has an exterior exit door, shall have at least one outside window operable from the inside without the use of tools and providing a clear opening of not less than 20 inches in width, 24 inches in height and 5.7 square feet in area. The bottom of the opening shall not be more than 44 inches off the floor.

Exception. In lieu of this regulation, an approved automatic sprinkler system may be installed in accordance with NFPA 13D, Standard for the Installation of Sprinkler

## Systems in One- and Two- Family Dwellings and Manufactured Homes.

### C. Interior Doors

Each interior door, when provided with a privacy lock, shall have a privacy lock that has an emergency release on the outside to permit entry when the lock has been locked by a locking knob, lever, button or other locking devices on the inside.

### D. Room Requirements:

1. Every home shall have sufficient space and functional arrangements to accommodate the normal activities of living in a mobile home.
2. Every home shall have at least one common area with no less than 150 square feet of gross floor area.
3. All bedrooms shall have at least 50 square feet of floor area.
4. Bedrooms designed for two or more people shall have 70 square feet of floor area plus 50 square feet for each person in excess of two.
5. Every room designed for sleeping purposes shall have accessible clothes hanging space with a minimum inside depth of 22 inches and shall be equipped with rod and shelf.
6. Bedrooms shall have an operable door with a latch to separate the room from the common area.
7. Each toilet compartment shall have a minimum of 21 inches of clear space in front of each toilet.
8. Hallways shall have a minimum horizontal dimension of 28 inches measured from interior finished surface to the opposite finished surface. Minor protrusions by doorknobs, trim, smoke detectors or light fixtures are permitted.

### E. Light and Ventilation

1. Each habitable room shall be provided with exterior windows and/or doors having a total glazed area of not less than 8 percent of the gross floor area.
2. Each bathroom and toilet compartment shall be provided with artificial light and, in addition, be provided with external windows or doors having not less than 1\_ square feet of fully operable glazed area, except where a mechanical ventilation system is provided capable of producing a change of air every 12 minutes. Any mechanical ventilation system shall exhaust directly to the outside of the home.

### F. Ceiling Height.

Every habitable room shall have a minimum ceiling height of 6 feet and 6 inches.

### G. Fire Detection Equipment.

All homes, regardless of the date of manufacture, shall meet the following requirements. At least one smoke detector (which may be a single station alarm device) shall be installed in the home in the following locations:

1. A smoke detector shall be installed on any wall in the hallway or space communicating with each bedroom area between the living area and the first bedroom door unless a door separates the living area from that bedroom area, in which case the detector shall be installed on the living area side as close to the door as practical. Homes having bedroom areas separated by any one or combination of communication areas such as kitchen, dining room, living room, or family room (but not a bathroom or utility room) shall have at least one detector protecting each bedroom area.
2. When located in hallways, the detector shall be between the return air intake and the living area.
3. The smoke detector shall not be placed in a location which impairs its effectiveness.
4. Smoke detectors shall be labeled as conforming to the requirements of Underwriters Laboratory Standards No. 217, Third Edition, 1985, as amended through October 8, 1985, for single and multiple station smoke detectors.
5. Each smoke detector shall be installed in accordance with its listing on a wall or

ceiling. If installed on a wall, the top of the detector shall be located 4 inches to 12 inches below the ceiling. However, when a detector is mounted on an interior wall below a sloping ceiling, it shall be located 4 inches to 12 inches below the intersection on the connecting exterior wall and the sloping ceiling (cathedral ceiling). The required detector(s) shall be attached to an electrical outlet box and the detector connector by permanent wiring method into a general electrical circuit. There shall be no switches in the circuit to the detector between the overcurrent protection device protecting the branch circuit and the detector. The smoke detector shall not be placed on any circuit protected by a ground fault circuit interrupter.

#### H. Flame Spread

1. Ceiling interior finish shall not have a flame spread rating exceeding 75.
2. Walls and ceilings adjacent to or enclosing a furnace or water heater shall have an interior finish with a flame spread rating not exceeding 25. Sealants and other trim material two inches or less in width used to finish adjacent surfaces within this space are exempt if supported by framing members or by materials having a flame spread rating not exceeding 25.
3. Exposed interior finishes adjacent to the cooking range shall have a flame spread rating not exceeding 50.
4. Kitchen cabinet doors, counter tops, back splashes, exposed bottoms, and end panels shall have a flame spread rating not to exceed 200.
5. Finish surfaces of plastic bathtubs, shower units, and tub or shower doors shall not exceed a flame spread rating of 200.
6. No burner of a surface cooking unit shall be closer than twelve horizontal inches to a window or an exterior door.

#### I. Kitchen Cabinet Protectors

The bottom and sides of combustible kitchen cabinets over cooking ranges to a horizontal distance of six inches from the outside edge of the cooking range shall be protected with at least 5/16 inch thick gypsum board or equivalent limited combustible material. One inch nominal framing members and trim are exempted from this requirement. The cabinet area over the cooking range or cook tops shall be protected by a metal hood with not less than a three inch eyebrow projecting horizontally from the front cabinet face. The 5/16 inch thick gypsum board or equivalent limited combustible material which is above the top of the hood may be supported by the hood. A 3/8 inch enclosed air space shall be provided between the bottom surface of the cabinet and the gypsum board or equivalent limited combustible material. The hood shall be at least as wide as the cooking range.

1. The metal hood will not be required if there is an oven at least as wide as the cooking range installed between the cabinet and the range, centered above the range.
2. Ranges shall have a vertical clearance above the cooking top of not less than 24 inches to the bottom of combustible cabinets.

#### J. Carpeting

Carpeting shall not be used in a space or compartment designed to contain only a furnace and/or water heater. Carpeting may be installed in other areas where a furnace or water heater is installed, provided that it is not located underneath the furnace or water heater.

#### K. Heating and Fuel Burning System

A person holding a master license issued by the State of Maine Oil and Solid Fuel Examining Board shall inspect and certify in writing that the heating and fuel system meets the requirements of NFPA-31 -Installation of Oil Burning Equipment as adopted by that Board.

#### L. Electrical Systems

A person holding a master license issued by the State of Maine Electricians Examining Board shall inspect and certify in writing that the electrical system is safe and meets the National Electrical code in effect at the time the home was manufactured.

### §2 Sanitary Standards

#### A. Plumbing Systems:

A person holding a master license issued by the State of Maine Plumbers Examining Board shall inspect and certify that the plumbing system is in conformance with the requirements of the Maine State Plumbing Code, is safe and verify that the following conditions are met.

1. The plumbing is of a durable material, free from defective workmanship that would cause a safety hazard.
2. Water closets are adjusted to use a minimum quantity of water consistent with proper performance and cleaning.
3. All plumbing, fixtures, drains, appurtenances, and appliances designed or used to receive or discharge liquid waste or sewage are connected to the drain system in a manner that is consistent with the State Plumbing Code.
4. All piping and fixtures subject to freezing temperatures shall be insulated or protected to prevent freezing under normal occupancy. To prevent freezing, a modern technological designed heat cable should be used.
5. All dishwashing machines shall not be directly connected to any waste piping, but shall discharge its waste through a fixed air gap installed above the machine.
6. Clothes washing machines shall drain either into a properly vented trap, into a laundry tub tailpiece with watertight connections, into an open standpipe receptor, or over the rim of a laundry tub.
7. Toilets shall be designed and manufactured according to approved or listed standards and shall be equipped with a water flushing device capable of adequately flushing and cleaning the bowl.
8. Each shower stall shall be provided with an approved watertight receptor with sides and back at least 1 inch above the finished dam or threshold.
9. Water supply plumbing systems shall be sized to provide an adequate amount of water to each plumbing fixture at a flow rate sufficient to keep the fixture in a clean and sanitary condition without any danger of backflow or siphonage.

#### B. Sewage Disposal

All subsurface sewage systems shall be located on soils approved by the local Plumbing Inspector and licensed Soil Evaluator. All water carried sewage shall be disposed of by means of one of the following:

1. A centralized private sewer system approved by the State of Maine Department of Human Services, serving each mobile home lot in the mobile home park.
2. Individual subsurface sewage systems meeting the requirements of the State of Maine Plumbing Code.

#### C. Refuse Collection and Disposal

The storage, collection and disposal of refuse in the mobile home park shall be so conducted as to create no health hazards, rodent harborage, insect breeding areas, accident or fire hazards, or air pollution.

#### D. Storm Drainage

A storm drainage plan shall be prepared by a professional engineer licensed by the State of Maine showing ditching, culverts, storm drains, easements, and other proposed improvements sufficient to accommodate a 100 year storm. Said storm drainage construction shall conform to the standards for storm water design and construction as set forth in Section VI.-B. of the Subdivision Ordinance.

### §3. Fire Protection

- A. If the mobile home park is to contain 20 living units or more and the park is not served by a piped central or public water supply then the developer shall construct a pond or ponds with suitable dry hydrant(s) within 1/2 mile of the proposed park to provide adequate water storage for fire-fighting purposes. An easement shall be granted to the Town of Appleton, Maine granting access to and maintenance of the dry hydrant(s) where necessary. The Planning Board may waive this requirement only upon submittal of evidence that there is an existing pond with dry hydrant(s) within 1/2 mile of the proposed mobile home park or that the soil types within 1/2 mile of the proposed mobile home park will not permit their construction: The burden of proving this rests solely with the developer.
- B. If the park is served by a piped central or public water supply then the developer shall install fire hydrants within the park at the rate of one hydrant for every six units or less.

### §4 Miscellaneous

- A. Utility Requirements: At least 294 cubic feet (for example, a utility building measuring approximately 6' wide by 7' long by 7' high or equivalent) of enclosed tenant storage facilities shall be conveniently provided on or near each mobile home lot for the storage of materials and equipment. All mobile home parks shall provide permanent electrical, water and sewage disposal connections to each mobile home in accordance with applicable state and local rules and regulations. State rules and regulations shall take precedence over local rules and regulations in the event there is a conflict.
- B. Signs: Signs and advertising devices shall be prohibited in the mobile home park except:
  - 1. Directional and informational signs for the convenience of tenants and the public relative to parking, office, traffic movement, etc.
  - 2. One identifying sign at each entrance of the mobile home park no larger than 18 square feet which may be indirectly lit, but not flashing.
  - 3. Mobile home "for sale" signs, provided that such signs that face a public road shall be no more than 10 square feet and shall be limited to one sign per mobile home.
  - 4. Mobile home address signs.
- C. Numbers: Each mobile home shall have a number on it for identification purposes, The styles and location of the identifying sign shall not interfere with vehicle sight distance.

## Article IX Mobile Home Park Inspection

It is required that the Code Enforcement Officer shall be responsible to perform an annual inspection. The applicant has the burden to demonstrate that the mobile home park complies with the provisions of this Ordinance, as well as all applicable laws, ordinances, statutes, or



regulations. The inspection will take place on the yearly anniversary of the project completion. The Code Enforcement Officer is hereby authorized and directed to make inspections of mobile home parks and the mobile homes located therein to determine the condition of the parks and mobile homes in order to safeguard the health and safety of the occupants of mobile home parks. The Code Enforcement Officer, or a duly authorized representative, shall have the authority to enter upon any private or public property at reasonable times for the purpose of inspecting and investigating conditions relating to the administration or enforcement of this Ordinance.

- A. A register containing the record of all mobile home owners and occupants located within the park shall be provided to the Town of Appleton and the Code Enforcement Officer. The register shall contain the following information:
  - 1. The name of the owner of each mobile home in the park.
  - 2. The manufacturer's name, model number, year, and serial number of each mobile home.
  - 3. If not owner-occupied, the names of the occupants of each mobile home.
  - 4. The lot location by number of each mobile home.
  - 5. The Park Owner shall keep the register up to date and available for inspection at all times by law enforcement officers, emergency services personnel, code enforcement officials, and other officials whose duties necessitate acquisition of the information contained in the register.
  - 6. A park management plan, including a 24 hour contact person, rules of the park, and schedule for park maintenance, trash removal, and road maintenance for the park.
  
- B. The Code Enforcement Officer shall issue a written report for a mobile home park inspection which will include the following:
  - 1. That the mobile home park is in compliance with all applicable laws, ordinances, regulations, and has received all necessary approvals from the Town of Appleton and the State of Maine.
  - 2. That the mobile home park, and all of the mobile homes and mobile home lots located therein, are in compliance with all of the requirements of this Ordinance, including the safety standards set forth in Article VIII.

#### Article X Mobile Home Lot Identification

- A. Each mobile home lot shall have a number supplied by the Park Owner, and the lots shall be numbered in an orderly, consecutive fashion. Even numbers shall be on one side of the street and odd numbers shall be on the opposite side of the street.
- B. Each mobile home shall be numbered in a manner consistent with the number assigned to the lot. The mobile home lot number shall be at least three inches high, and the Park Owner shall be responsible for the placement and maintenance of the numbers on each mobile home in a prominent place so that they may be readily observable by emergency services personnel.
- C. The Park Owner shall be responsible for the placement and maintenance of the lot numbers on the electrical service (i.e., meter junction box) for each mobile home.

#### Article XI Mobile Home Park Street Identification

The Park Owner shall cooperate with the Planning Board and Code Enforcement Officer to establish names, consistent with the Town of Appleton Addressing Ordinance for streets within the mobile home park. Said street names shall be substantially different than existing street names within the Town of Appleton so as not to be confused in sound or spelling. In general, said streets shall have names, not numbers or letters.

The Park Owner shall erect and maintain street name signs at all street intersections, which signs shall contain lettering that is reflectorized.

## Article XII Obligations of Park Owners

- A. The Park Owner shall provide the occupants of the mobile home park with a copy of this Ordinance, and inform the occupants of their duties and responsibilities under this Ordinance.
- B. The Park Owner shall operate the mobile home park, or cause the same to be operated, in compliance with this Ordinance, and shall provide adequate supervision to maintain the park, its facilities, improvements, and equipment in good repair and in a clean and sanitary condition, as well as in compliance with all state and local laws, regulations, or ordinances.
- C. The Park Owner shall maintain all streets, roadways and driveways in the mobile home park in good repair, and shall keep the same clear of snow, ice, standing water, and debris. In addition, the streets and roadways in the mobile home park shall be constructed and maintained so as to comply with the "Fire Lane" requirements of the Town of Appleton Fire Prevention Code.
- D. The Park Owner shall maintain the mobile home park in a clean, orderly, safe and sanitary condition at all times.
- E. The Park Owner shall not permit the presence or any accumulation of any:
  - 1. abandoned, unregistered or un-inspected motor vehicles, or parts thereof, or
  - 2. discarded, worn-out or junked plumbing, heating supplies, electronic or industrial equipment; household appliances; furniture; discarded, scrap or junked lumber; old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste or scrap iron, steel or other scrap ferrous or nonferrous material, or other solid waste or debris in the mobile home park, whether on the streets or other common areas under the control of the Park Owner or on the individual mobile home lots.
- F. The Park Owner shall remove any abandoned, burned, dilapidated, or abandoned mobile home from the mobile home park within ten business days of a notice from the Code Enforcement Officer.
- G. The Park Owner shall be responsible for the proper placement of each mobile home on its mobile home stand, which includes securing its stability and installing all utility connections. Owner shall also be responsible for the disconnection of all utilities prior to the departure of a mobile home from the park. The Park Owner shall conspicuously post a copy of the license in Park Owner's office or on the premises of the mobile home park at all times.
- H. The Park Owner shall notify the Code Enforcement Officer and Tax Assessor, in writing, of the arrival or impending departure of any mobile home or any change of ownership that occurs within the park.
- I. The Park Owner shall make adequate provision for the storage, collection, and lawful disposal of all refuse from the mobile home park, and shall take adequate measures to prevent the creation of health hazards, rodent harborage, insect breeding areas, accident hazards, or air, water, or ground pollution. All refuse and garbage shall be bagged in plastic garbage bags by the homeowner or occupant for storage in fully and tightly enclosed, watertight, rodent-proof containers, which shall be provided by Owner in sufficient number and capacity to prevent any refuse or garbage from overflowing.

Satisfactory container racks or holders shall be provided by the Park Owner and shall be located not more than 150 feet from any mobile home lot, or the Park Owner shall cooperate with the Code Enforcement Officer to establish mutually agreed upon locations.

- J. The Park Owner shall bring all nonconforming non-certified mobile homes into compliance with the safety standards of Article VIII. The Code Enforcement Officer may, as part of a conditional license, enter into a schedule of compliance with the Owner.
- K. The Park Owner shall provide adequate supervision to ensure that the mobile home park, mobile home lot, mobile homes, and the owners or occupants of mobile homes comply with the provisions of this Ordinance. The Park Owner shall include provisions in rental agreements requiring that individual owners or occupants of mobile homes shall comply with the provisions of this Ordinance, and the Park Owner shall be obligated to pursue legal remedies for any breach of those requirements.
- L. The Park Owner shall cooperate fully with the Code Enforcement Officer in the administration and enforcement of this Ordinance, including providing assistance in gaining access to mobile homes for the required inspections.
- M. The Park Owner shall not assign or transfer the license without the prior approval of the Code Enforcement Officer. Any assignment or transfer shall be subject to the condition that the transferee agrees in writing to abide by the terms and conditions of the license and this Ordinance.
- N. The owner(s) of the land on which the mobile home park is located shall be ultimately responsible for compliance with this Ordinance, and shall remain responsible therefore regardless of the fact that this Ordinance may also place certain responsibilities on the license holder, or mobile home owners and/or occupants. This shall be so regardless of any agreements between the owners of the land and the license holder or owner/occupants of mobile homes as to which parties shall assume such responsibility.

### Article XIII Obligations of Mobile Home Owners or Occupants

- A. It shall be the duty of the owners or occupants of mobile homes in a mobile home park to give the Code Enforcement Officer access to the mobile homes at reasonable times for the purpose of conducting an inspection thereof to determine satisfactory compliance with the requirements of this Ordinance.
- B. The owners or occupants of mobile homes in a mobile home park shall comply with all applicable requirements of this Ordinance, and shall maintain his/her mobile home, mobile home lot, and any facilities, improvements, or equipment, in good repair and in a clean and sanitary condition. The home owner or occupant shall not cause or permit the presence or accumulation of the items specified in Article XII-A on his/her mobile home lot, or at any other location within the mobile home park.
- C. No home owner or occupant shall allow animals in his/her custody to run at large, or commit any nuisance, within the mobile home park.
- D. No home owner or occupant shall permit his/her mobile home to be occupied by a greater number of persons than that for which it was designed.
- E. The space directly beneath each mobile home shall be kept clean and free from refuse, or other combustible materials.
- F. No home owner or occupant shall permit the parking of vehicles or the storage of personal property so as to interfere with access to the lots or mobile homes in the mobile home park by other owners or occupants, or especially with access by emergency vehicles or personnel.
- G. No home owner or occupant shall locate or use a utility structure on his/her lot unless it is located no closer than 10 feet to any mobile home or other utility structure, and is made of noncombustible materials. In addition, said structure shall not exceed 150 square feet in

area and 10 feet in height.

- H. No home owner or occupant shall dispose of any garbage or refuse except by first bagging the garbage or refuse into a plastic garbage bag and then placing them into provided facilities in a clean and sanitary manner.
- I. The individual owner of a non-certified mobile home shall be responsible for bringing the mobile home into compliance with the safety standards set forth in Article VIII. The Code Enforcement Officer is authorized to enter into a schedule of compliance with such a home owner.

#### Article XIV Restrictions on the Sale, Lease, Transfer, Occupancy or Location of Mobile Homes in a Mobile Home Park

- A. No person may sell, transfer, or otherwise convey a mobile home in a mobile home park without a prior written determination from the Code Enforcement Officer stating that: (1) the mobile home is a certified mobile home that is in a good state of repair and is in compliance with all applicable codes, ordinances, laws or regulations or (2) is a non-certified mobile home that is in a good state of repair and is in compliance with all applicable codes, ordinances, laws or regulations, including the requirements of Article VIII of this Ordinance. The provisions hereof shall not apply to a mobile home that is being removed from the mobile home park.
- B. No person shall locate, move from one mobile home lot to another mobile home lot, or replace a mobile home in a mobile home park without a prior written determination from the Code Enforcement Officer stating that: (1) the mobile home is a certified mobile home that is in a good state of repair and is in compliance with all applicable codes, ordinances, laws or regulations or (2) is a non-certified mobile home that is in a good state of repair and is in compliance with all applicable codes, ordinances, laws or regulations, including the requirements of Article VIII of this Ordinance.
- C. No person shall permit or allow the occupancy of a mobile home in a mobile home park for dwelling purposes without a prior Certificate of Compliance from the Code Enforcement Officer stating that: (1) the mobile home is a certified mobile home that is in a good state of repair and is in compliance with all applicable codes, ordinances, laws or regulations or (2) is a non-certified mobile home that is in a good state of repair and is in compliance with all applicable codes, ordinances, laws or regulations, including the requirements of Article VIII of this Ordinance, and that the mobile home is properly placed on a mobile home stand and properly connected to water, sewer, and electrical utilities. The Park Owner shall be responsible for the proper installation of all utility connections, which shall be accomplished by duly qualified and licensed persons.
- D. The placement of a mobile home that is not (1) a certified mobile home that is in a good state of repair and is in compliance with all applicable codes, ordinances, laws or regulations or (2) a non-certified mobile home that is in a good state of repair and is in compliance with all applicable codes, ordinances, laws, or regulations, including the requirements of Article VIII of this Ordinance in or near the mobile home park is strictly prohibited. The area of the mobile home park and any of Park Owner's land in the vicinity shall not be used as a staging area for the rehabilitation of non-certified mobile homes. The foregoing shall not preclude the rehabilitation of mobile homes that existed in a park as of the date of adoption of this Ordinance.

#### Article XV Enforcement

##### §1 Construction Inspection

- A. At least five days prior to completing each major phase of construction of required

improvements, the developer or builder shall notify the Code Enforcement Officer in writing of the time when it is proposed to complete construction of the following phases of construction so that the Municipal Officers can cause inspection to be made to assure that all municipal specifications and requirements shall be met during the construction of required improvements, and to assure the satisfactory completion of improvements and utilities required by the Planning Board:

1. Roads and Walkways
  2. Septic and Drainage
  3. Utilities, Lighting and Signs
  4. Fire Pond and Open Space, if required
  5. Unit Siting, Buffers, and Utility Building Siting
- B. If the inspecting official finds upon inspection that any of the required improvements have not been constructed in accordance with the plans and specifications filed for the mobile home park, it shall be so reported in writing to the Selectmen, Planning Board, developer and owner of the mobile home park. The Selectmen shall take any steps necessary to preserve the rights of the Town of Appleton, Maine.
- C. If at any time before or during the construction of the required improvements it appears to be necessary or desirable to modify the required improvements, the inspecting official is authorized to approve minor modifications due to unforeseen circumstances such as encountering hidden outcrops of bedrock, natural springs, etc. The inspecting official shall issue any approval under this article in writing and shall transmit a copy of the approval to the Planning Board. Revised plans shall be filed with the Chairman of the Planning Board. For major modifications, such as relocation of rights-of-way, property or lot boundaries, changes of grade by more than 1 %, etc., the developer or owner shall obtain permission in writing from the Planning Board to modify the plans.
- D. Upon completion of road construction, a written certification signed by a professional engineer registered in the State of Maine shall be submitted to the Chairman of the Planning Board at a regular scheduled Planning Board meeting, at the expense of the applicant, certifying that the road(s) meet or exceed the design and construction requirements of this Ordinance.

## §2 Violations

- A. No mobile home park plan shall be recorded in the Registry of Deeds until a Final Plan has been approved and signed by the Planning Board in accordance with this Ordinance.
- B. No person, corporation or other legal entity may rent or offer to rent any land in a mobile home park which has not been approved by the Planning Board and recorded in the Registry of Deeds.
- C. No development of the infrastructure of a mobile home park may begin until Final Plan approval by the Planning Board and recording in the Registry of Deeds. Development includes the grading and construction of roads, the grading of lots, utility installations, siting of mobile homes, and construction of buildings.
- D. No development of infrastructure of a mobile home park may begin and no mobile home park plan shall be approved by the Board or recorded in the Registry of Deeds until the financial performance guarantee as set forth in Article XVI has been complied with.

## §3 Park Plan Amendments after Approval

No changes, erasures, or modifications shall be made in a Final Plan after approval has been given by the Planning Board unless the plan is first resubmitted and the Planning Board approves any modifications. The applicant is not required to go through the complete review process of an amendment to an existing mobile home park, unless, in the judgment of the Planning Board the amendment substantially alters the character of the original mobile home

park, or unless the change constitutes a new mobile home park. If an amended Final Plan is recorded without complying with this requirement, it shall be null and void. The Code Enforcement Officer may institute proceedings to have the plan stricken from the Registry of Deeds.

#### §4 Enforcement

The Code Enforcement Officer or the Selectmen of the Town of Appleton, Maine, upon finding that any provisions of this Ordinance or the conditions of any approval(s) is being violated, are authorized to institute legal proceedings to enjoin violations of this Ordinance.

#### §5 Penalties

Any person, firm or corporation being the owner or having control or use of any residential building or infrastructure constructed or placed in violation of any of the provisions of this Ordinance shall be fined in accordance with the penalty provisions of Title 30-A M.R.S.A. Section 4452, along with any other pertinent civil penalties.

### Article XVI Performance Guarantees

#### §1. Types of Performance Guarantees

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

- A. Either a certified check payable to the Town or a savings account or certificate of deposit naming the Town as owner, for the establishment of an escrow account; or
- B. A performance bond payable to the Town issued by a surety company, approved by the Selectmen; or
- C. An irrevocable letter of credit from a financial institution establishing funding for the construction of the mobile home park, from which the Town may draw if construction is inadequate, approved by the Selectmen.
- D. The conditions and amount of the guarantee shall be determined by the Board with advice of the Code Enforcement Officer, Road Commissioner, Selectmen, and/or Town Attorney.

#### §2 Contents of Guarantee:

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

- A. Escrow Account

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

amount withdrawn to complete the required improvements.

B. Performance Bond

A performance bond shall detail the conditions of the bond, the method for release of the bond or portions of the bond to the developer, and the procedures for collection by the municipality. The bond documents shall specifically reference the mobile home park for which approval is sought.

C. Letter of Credit

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

§3. Release of guarantee

Prior to the release of any part of the performance guarantee, the Board shall determine to its satisfaction, in part upon the report of the inspecting official and whatever other agencies and departments may be involved, that the proposed improvements meet or exceed the design and construction requirements for that portion of the improvements for which the release is requested.

§4. Default

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

Article XVII Appeals

Any aggrieved party having proper standing may within thirty (30) days, appeal any decision of the Planning Board under these regulations to the Superior Court of Knox County.

Article XVIII Amendment of this Ordinance

An amendment to this Ordinance may be initiated by:

- A. A Majority vote of the Planning Board
- B. Request of the Selectmen to the Planning Board
- C. Written petition to the Selectmen bearing signatures of registered voters of the Town of Appleton, Maine numbering at least ten percent of the number who voted in the last gubernatorial election.

All proposed amendments to this Ordinance shall be referred to the Planning Board for their recommendation. The Planning Board may hold a public hearing on any proposed amendment. Within forty five days of receiving a proposed amendment, the Planning Board shall make known their recommendation to the Selectmen and to the Town. After receiving the recommendation of the Planning Board, the amendment shall be voted on by the voters of the Town of Appleton, Maine at a Town Meeting, a majority vote being required for adoption.

## Article XIX Definitions

For the purposes of this Ordinance, the following definitions shall apply:

**Accessory Structure:** A structure of a nature customarily incidental or subordinate to the principal structure.

**Board:** The Appleton Planning Board

**Code Enforcement Officer:** A person or persons appointed by the Selectmen to administer and enforce Town Ordinances. The term shall also include Building Inspector, Fire Inspector, Local Plumbing Inspector and the like, if applicable.

**Driveway:** A private vehicular entrance from a road or right-of-way. The driveway itself shall not constitute the means of legal access along which frontage may be measured.

**Comprehensive Plan:** Any part or element of the overall plan for development of the Town of Appleton, Maine as defined in Title 30-A, M.R.S.A. §4301 and as the same may be amended from time to time.

**Environmentally sensitive areas:** Wetlands, swamps, wildlife habitat areas, prime agricultural areas, areas with steep slopes, areas with poorly drained soils ,and flood plain areas (subject to a 100 year flood).

**Family:** One or more persons occupying a premise and living as a single housekeeping unit.

**Licensee:** The mobile home park owner or the applicant for a mobile home park license.

**Lot Coverage:** The total horizontal area within the lot lines.

**Lot Width:** The distance between the side boundaries of the lot measured at the front setback line or the shortest distance between the side boundaries anywhere along their length whichever is shortest.

**Mobile Home:** Two types of mobile homes are included in this definition:

1. Certified mobile home. Those units constructed after June 15, 1976, which the manufacturer certifies are constructed in compliance with the United States Department of Housing and Urban Development standards, meaning structures transportable in one or more sections, that in the traveling mode are fourteen (14) body feet or more in width and are seven hundred fifty (750) or more square feet, and that are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities, including the plumbing, heating, air-conditioning and electrical systems contained therein. This term shall also include any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards



Act of 1974, 42 United States Codes 5401, et seq.

2. Non-certified mobile homes: Those units constructed prior to June 15, 1976, meaning structures, transportable in one (1) or more sections, which are eight (8) body feet or more in width and are thirty-two (32) body feet or more in length, and which are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities, including the plumbing, heating, air-conditioning or electrical systems contained therein.

**Mobile Home Owner:** A person having ownership and/or legal control of a mobile home herein after referred to as home owner.

**Mobile Home Park:** A parcel of land under unified ownership approved by the Town for the placement thereon of three or more mobile homes.

**Mobile Home Park Lot:** The area of land on which an individual mobile home is situated within a mobile home park and which is reserved for use by the occupants of that mobile home.

**Mobile Home Park Owner:** An individual, partnership, corporation, limited liability company, limited liability partnership, trust or any other form of legal entity recognized under the laws of the State of Maine having ownership and/or legal control of a mobile home park herein after referred to as Park Owner.

**Mobile Home Stand:** The part of an individual mobile home lot which has been constructed and reserved for the placement thereon of a mobile home.

**Setback:** The horizontal distance from a lot line to the nearest part of a structure.

**Structure:** Anything constructed or erected, the use of which requires a location on the ground or attachment to something located on the ground, including, but not limited to, buildings and mobile homes.

**Subdivision Ordinance:** The Town of Appleton Subdivision Ordinance as adopted Nov. 6<sup>th</sup>, 1986 by the Town, and its subsequent amendments.

**Utility Structure:** A structure located on a mobile home lot which is designated and used for the storage and use of personal property of the mobile home occupants.

## Article XX Certification of Adoption

I hereby attest that this is a true copy of the Town of Appleton Mobile Home Park Ordinance duly adopted on **June 13, 2007**

---

Appleton Town Clerk, Pamela J. Tibert

June 13, 2007

# Municipal Planning Board Ordinance Appleton, Maine

1. Establishment. Pursuant to Art. VIII, pt. 2, Section 1 of the Maine Constitution and 30-A M.R.S.A. § 3001, the Town of Appleton hereby establishes a Planning Board.

2. Elections.

A. Board members shall be elected by the voters of the town and sworn by the clerk or other person authorized to administer oaths.

B. The board shall consist of five (5) members and two associate members.

C. The term of each member shall be three (3) years, except the initial election which shall be: one member for one year, two members for two years, and two members for three years respectively. The term of office of the associate members shall be three years. The three year terms of the associate members shall be adjusted as soon as possible, by a one time shortening of terms, to begin on June 2012, 2015, 2018 etc.

D. When there is a permanent vacancy, the municipal officers shall within 30 days of its occurrence appoint a person to serve until the next annual town meeting. A vacancy shall occur upon: the resignation of any member, death of any member, when a member ceases to be a legal resident of the town of Appleton, or any other provision provided for in Title 30-A M.R.S.A. § 2602. When a vacancy occurs, the chairperson of the board shall immediately so advise the municipal officers in writing. The person appointed by the municipal officers serves only until the next annual town meeting at which time a new member shall be elected.

E. A municipal officer may not be a member or associate member.

3. Organization and Rules.

A. The board shall elect a chairperson, vice chairperson, and a secretary from among its members. The term of all offices shall be one year with eligibility for re-election.

B. When a member is unable to act because of interest, physical incapacity, absence or any other reason satisfactory to the chairperson, the chairperson shall designate an associate member to sit in that member's stead.

C. An associate member may attend all meetings of the board and participate in its proceedings, but may vote only when he or she has been designated by the chairperson to sit for a member.

- D. Any question of whether a member shall be disqualified from voting on a particular matter shall be decided by a majority vote of the members except the member who is being challenged.
- E. The chairperson shall call at least one regular meeting of the board each month.
- F. No meeting of the board shall be held without a quorum consisting of three members or associate members authorized to vote. The board shall act by majority vote of the voting members present.
- G. The board shall adopt rules for transaction of business and the secretary shall keep a record of its resolutions, transactions, correspondence, findings and determinations. All records shall be deemed public and may be inspected at reasonable times.

4. Duties & Powers

- A The board shall perform such duties and exercise such powers as are provided by the Municipal Planning Board Ordinance of Appleton and the laws of the State of Maine.
- B. The board may obtain goods and services necessary to its proper function within the limits of appropriations made for the purpose.

5. Certificate of Adoption

I hereby attest that this is a true copy of the Municipal Planning Board Ordinance for the town of Appleton, Maine duly adopted on June 11, 2002.

June 9, 2010 – Annual Town Meeting Article 28 – Amendment.

\_\_\_\_\_  
Appleton Town Clerk

\_\_\_\_\_  
Appleton Town Seal

\_\_\_\_\_  
Date





# **Town of Appleton**

## **Ordinance Restricting Vehicle Weight on Posted Ways**

### **Section 1. Purpose and Authority**

The purpose of this "Ordinance Restricting Vehicle Weight on Posted Ways" (hereinafter, the "Ordinance") is to prevent damage to town ways and bridges in the Town of Appleton which may be caused by vehicles of excessive weight, to lessen safety hazards and the risk of injury to the traveling public, to extend the life expectancy of town ways and bridges, and to reduce the public expense of their maintenance and repair. This Ordinance is adopted pursuant to 30-A M.R.S.A. § 3009 and 29-A M.R.S.A. §§ 2395 and 2388.

### **Section 2. Definitions**

The definitions contained in Title 29-A M.R.S.A. shall govern the construction of words contained in this Ordinance. Any words not defined therein shall be given their common and ordinary meaning.

### **Section 3. Restrictions and Notices**

The municipal officers may, either permanently or seasonally, impose such restrictions on the gross registered weight of vehicles as may, in their judgment, be necessary to protect the traveling public and prevent abuse of the highways, and designate the town ways and bridges to which the restrictions shall apply.

Whenever notice has been posted as provided herein, no person may thereafter operate any vehicle with a gross registered weight in excess of the restriction during any applicable time period on any way or bridge so posted unless otherwise exempt as provided herein.

Pursuant to 29-A M.R.S.A. § 2395, the notice shall contain, at a minimum, the following information: the name of the way or bridge, the gross registered weight limit, the time period during which the restriction applies, the date on which the notice was posted, and the signatures of the municipal officers. The notice shall be conspicuously posted at each end of the restricted portion of the way or bridge in a location clearly visible from the traveled way

Whenever a restriction expires or is lifted, the notices shall be removed wherever posted. Whenever a restriction is revised or extended, existing notices shall be removed and replaced with new notices. No person may remove, obscure or otherwise tamper with any notice so posted except as provided herein.

### **Section 4. Exemptions**

The following vehicles are exempt under State law:

Any vehicle delivering home heating fuel and operating in accordance with a permit issued by the MDOT under 29-A M.R.S.A. § 2395 (4) and, when necessary during a period of drought emergency declared by the governor, any vehicle transporting well-drilling equipment for the purpose of drilling a replacement well or for improving an existing well on property where that well is no longer supplying sufficient water for residential or agricultural purpose and operating

in accordance with a permit issued by the MDOT under 29-A M.R.S.A. § 2395 (4-A).

The following vehicles are also exempt under the specific provisions of this ordinance:

1. Any vehicle or combination of vehicles registered for a gross weight of 23,000 pounds or less.
2. Any vehicle or combination of vehicles registered for a gross weight in excess of 23,000 pounds and traveling without a load other than tools or equipment necessary for the proper operation of the vehicle. This exemption does not apply to special mobile equipment. It shall be a defense to a violation of this sub-section if the combined weight of any vehicle or combination of vehicles registered for a gross weight in excess of 23,000 pounds and its load is in fact less than 23,000 pounds.
3. MaineDOT vehicles or other vehicles authorized by MaineDOT or a municipality or county to maintain the roads under their authority.
4. Authorized emergency vehicles as defined in 29-A M.R.S.A. § 2054, school buses, a wrecker towing a disabled vehicle of legal weight from a posted highway, and vehicles with three axles or less under the direction of a public utility and engaged in utility infrastructure maintenance or repair.
5. Any two axle vehicles registered for a gross weight in excess of 23,000 pounds and less than or equal to 34,000 pounds that are carrying any of the Special Commodities may operate without a permit. Special Commodities includes any of the following:
  - a. Home delivered heating fuel (oil, gas, coal, stove size wood that is less than 36” in length, propane and wood pellets);
  - b. Petroleum products;
  - c. Groceries;
  - d. Bulk milk;
  - e. Solid waste;
  - f. Animal bedding;
  - g. Returnable beverage containers;
  - h. Sewage from private septic tanks or porta-potties; or
  - i. Medical gases.

### **Section 5. Permits**

The owner or operator of any vehicle not otherwise exempt as provided herein may apply in writing to the municipal officers for a permit to operate on a posted way or bridge notwithstanding the restriction. The municipal officers may issue a permit only upon all of the following findings:

- a) no other route is reasonably available to the applicant;
- b) it is a matter of economic necessity and not mere convenience that the applicant use the way or bridge; and
- c) the applicant has tendered cash, a bond or other suitable security running to the municipality in an amount sufficient, in their judgment, to repair any damage to the way or bridge which may reasonably result from the applicant’s use of same.



Even if the municipal officers make the foregoing findings, they need not issue a permit if they determine the applicant's use of the way or bridge could reasonably be expected to create or aggravate a safety hazard or cause substantial damage to a way or bridge maintained by the municipality. They may also limit the number of permits issued or outstanding as may, in their judgment, be necessary to preserve and protect the highways and bridges.

In determining whether to issue a permit, the municipal officers shall consider the following factors:

- a) the gross registered weight of the vehicle;
- b) the current and anticipated condition of the way or bridge;
- c) the number and frequency of vehicle trips proposed;
- d) the cost and availability of materials and equipment for repairs;
- e) the extent of use by other exempt vehicles; and
- f) such other circumstances as may, in their judgment, be relevant.

The municipal officers may issue permits subject to reasonable conditions, including but not limited to restrictions on the actual load weight and the number or frequency of vehicle trips, which shall be clearly noted on the permit.

#### **Section 6. Administration and Enforcement**

This Ordinance shall be administered and may be enforced by the municipal officers or their duly authorized designee [such as road commissioner, code enforcement officer or law enforcement officer].

#### **Section 7. Penalties**

Any violation of this Ordinance shall be a civil infraction subject to a fine of not less than \$250.00 nor more than \$1000.00. Each violation shall be deemed a separate offense. In addition to any fine, the municipality may seek restitution for the cost of repairs to any damaged way or bridge and reasonable attorney fees and costs. Prosecution shall be in the name of the municipality and shall be brought in the Maine District Court.

#### **Section 8. Amendments**

This Ordinance may be amended by the municipal officers at any properly noticed meeting.

#### **Section 9. Severability; Effective Date**

In the event any portion of this Ordinance is declared invalid by a court of competent jurisdiction, the remaining portions shall continue in full force and effect. This Ordinance shall take effect immediately upon enactment by the municipal officers at any properly noticed meeting.

This ordinance “Ordinance Restricting Vehicle Weight on Posted Ways, Town of Appleton, Maine” is effective upon its adoption by the Board of Selectmen, Town of Appleton.

Adopted March 16, 2017.

Town of Appleton by its Select Board:

*s/John Fenner*  
John Fenner

*s/Peter Beckett*  
Peter Beckett

*s/Lorie Costigan*  
Lorie Costigan

*s/Scott Wiley*  
Scott Wiley

*s/Jason Gushee*  
Jason Gushee

A True Attest Copy:

*s/Pamela J. Smith*  
Pamela J. Smith

## Town of Appleton

### **PROPERTY ASSESSED CLEAN ENERGY (PACE) ORDINANCE.**

#### **PREAMBLE**

WHEREAS, the 124<sup>th</sup> Maine Legislature has enacted Public Law 2009, Chapter 591, “An Act to Increase the Affordability of Clean Energy for Homeowners and Businesses,” also known as “the Property Assessed Clean Energy Act” or “the PACE Act”; and

WHEREAS, that Act authorizes a municipality that has adopted a Property Assessed Clean Energy (“PACE”) Ordinance to establish a PACE program so that owners of qualifying property can access financing for energy saving improvements to their properties located in the Town, financed by funds awarded to the Efficiency Maine Trust under the Federal Energy Efficiency and Conservation Block Grant (EECBG) Program and by other funds available for this purpose, and to enter into a contract with the Trust to administer functions of its PACE program; and

WHEREAS, the Municipality wishes to establish a PACE program; and

NOW THEREFORE, the Municipality hereby enacts the following Ordinance:

#### **ARTICLE I - PURPOSE AND ENABLING LEGISLATION**

##### § -1 Purpose

By and through this Ordinance, the Town of Appleton declares as its public purpose the establishment of a municipal program to enable its citizens to participate in a Property Assessed Clean Energy (“PACE”) program so that owners of qualifying property can access financing for energy saving improvements to their properties located in the Town. The Town declares its purpose and the provisions of this Ordinance to be in conformity with federal and State laws.

##### § -2 Enabling Legislation

The Town enacts this Ordinance pursuant to Public Law 2009, Chapter 591 of the 124<sup>th</sup> Maine State Legislature -- “An Act To Increase the Affordability of Clean Energy for Homeowners and Businesses,” also known as “the Property Assessed Clean Energy Act” or “the PACE Act” (codified at 35-A M.R.S.A. § 10151, *et seq.*).

#### **ARTICLE II - TITLE AND DEFINITIONS**

### § -3 Title

This Ordinance shall be known and may be cited as “Town of Appleton Property Assessed Clean Energy (PACE) Ordinance” (the “Ordinance”).”

### § -4 Definitions

Except as specifically defined below, words and phrases used in this Ordinance shall have their customary meanings; as used in this Ordinance, the following words and phrases shall have the meanings indicated:

- 1. Energy saving improvement.** “Energy saving improvement” means an improvement to qualifying property that is new and permanently affixed to qualifying property and that:
  - A. Will result in increased energy efficiency and substantially reduced energy use and:
    - (1) Meets or exceeds applicable United States Environmental Protection Agency and United States Department of Energy Energy Star program or similar energy efficiency standards established or approved by the Trust; or
    - (2) Involves air sealing, insulating, and other energy efficiency improvements of residential, commercial or industrial property in a manner approved by the Trust; or
  - B. Involves a renewable energy installation or an electric thermal storage system that meets or exceeds standards established or approved by the trust.
- 2. Municipality.** “Municipality” shall mean the Town of Appleton.
- 3. PACE agreement.** “Pace agreement” means an agreement between the owner of qualifying property and the Trust that authorizes the creation of a PACE mortgage on qualifying property and that is approved in writing by all owners of the qualifying property at the time of the agreement, other than mortgage holders.
- 4. PACE assessment.** “PACE assessment” means an assessment made against qualifying property to repay a PACE loan.
- 5. PACE district.** “Pace district” means the area within which the Municipality establishes a PACE program hereunder, which is all that area within the Municipality’s boundaries.

6. **PACE loan.** “PACE loan” means a loan, secured by a PACE mortgage, made to the owner(s) of a qualifying property pursuant to a PACE program to fund energy saving improvements.
7. **PACE mortgage.** “PACE mortgage” means a mortgage securing a loan made pursuant to a PACE program to fund energy saving improvements on qualifying property.
8. **PACE program.** “PACE program” means a program established under State statute by the Trust or a municipality under which property owners can finance energy savings improvements on qualifying property.
9. **Qualifying property.** “Qualifying property” means real property located in the PACE district of the Municipality.
10. **Renewable energy installation.** “Renewable energy installation” means a fixture, product, system, device or interacting group of devices installed behind the meter at a qualifying property, or on contiguous property under common ownership, that produces energy or heat from renewable sources, including, but not limited to, photovoltaic systems, solar thermal systems, biomass systems, landfill gas to energy systems, geothermal systems, wind systems, wood pellet systems and any other systems eligible for funding under federal Qualified Energy Conservation Bonds or federal Clean Renewable Energy Bonds.
11. **Trust.** “Trust” means the Efficiency Maine Trust established in 35-A M.R.S.A. § 10103 and/or its agent(s), if any.

### **ARTICLE III - PACE PROGRAM**

1. **Establishment; funding.** The Municipality hereby establishes a PACE program allowing owners of qualifying property located in the PACE district who so choose to access financing for energy saving improvements to their property through PACE loans administered by the Trust or its agent. PACE loan funds are available from the Trust in municipalities that 1) adopt a PACE Ordinance, 2) adopt and implement a local public outreach and education plan, 3) enter into a PACE administration contract with the Trust to establish the terms and conditions of the Trust’s administration of the municipality’s PACE program, and 4) agree to assist and cooperate with the Trust in its administration of the municipality’s PACE program.
2. **Amendment to PACE program.** In addition, the Municipality may from time to time amend this Ordinance to use any other funding sources made available to it or appropriated by it for the express purpose of its PACE program, and the

Municipality shall be responsible for administration of loans made from those other funding sources.

#### **ARTICLE IV – CONFORMITY WITH THE REQUIREMENTS OF THE TRUST**

**1. Standards adopted; Rules promulgated; model documents.** If the Trust adopts standards, promulgates rules, or establishes model documents subsequent to the Municipality’s adoption of this Ordinance and those standards, rules or model documents substantially conflict with this Ordinance, the Municipality shall take necessary steps to conform this Ordinance and its PACE program to those standards, rules, or model documents.

#### **ARTICLE V – PROGRAM ADMINISTRATION; MUNICIPAL LIABILITY**

##### **1. Program Administration**

**A. PACE Administration Contract.** Pursuant to 35-A M.R.S.A. §10154(2)(A) (2) and (B), the Municipality will enter into a PACE administration contract with the Trust to administer the functions of the PACE program for the Municipality. The PACE administration contract with the Trust will establish the administration of the PACE program including, without limitation, that:

- i. the Trust will enter into PACE agreements with owners of qualifying property in the Municipality’s PACE district;
- ii. the Trust, or its agent, will create and record a Notice of the PACE agreement in the appropriate County Registry of Deeds to create a PACE mortgage;
- iii. the Trust, or its agent, will disburse the PACE loan to the property owner;
- iv. the Trust, or its agent, will send PACE assessment statements with payment deadlines to the property owner;
- v. the Trust, or its agent, will be responsible for collection of the PACE assessments;
- vi. the Trust, or its agent, will record any lien, if needed, due to nonpayment of the assessment;

vii. the Trust or its agent on behalf of the Municipality, promptly shall record the discharges of PACE mortgages upon full payment of the PACE loan.

**B. Adoption of Education and Outreach Program.** In conjunction with adopting this Ordinance, the Municipality shall adopt and implement an education and outreach program so that citizens of the Municipality are made aware of home energy saving opportunities, including the opportunity to finance energy saving improvements with a PACE loan.

**C. Assistance and Cooperation.** The Municipality will assist and cooperate with the Trust in its administration of the Municipality's PACE program.

**D. Assessments Not a Tax.** PACE assessments do not constitute a tax but may be assessed and collected by the Trust in any manner determined by the Trust and consistent with applicable law.

## **2. Liability of Municipal Officials; Liability of Municipality**

**A.** Notwithstanding any other provision of law to the contrary, municipal officers and municipal officials, including, without limitation, tax assessors and tax collectors, are not personally liable to the Trust or to any other person for claims, of whatever kind or nature, under or related to a PACE program, including, without limitation, claims for or related to uncollected PACE assessments.

**B.** Other than the fulfillment of its obligations specified in a PACE administration contract with the Trust entered into under Article VI, §1(A) above, a municipality has no liability to a property owner for or related to energy savings improvements financed under a PACE program.

Adopted – June 13, 2012

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Appleton Town Seal

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Appleton Town Clerk

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Date

A True Attest Copy:

Pamela J. Tibert



**TOWN OF APPLETON**  
**Ordinance for the Recall of Elected Municipal Officials**

**SECTION 1. Authority**

This Ordinance is adopted pursuant to Title 30-A § 2602(6).

**SECTION 2. Applicability**

Any elected official of the Town of Appleton, Maine, may be recalled and removed from office as provided herein.

**SECTION 3. Grounds for Recall**

An elected official may be recalled for reasons specified by the petitioner.

**SECTION 4. Notice of intention.**

In order to initiate a recall election under subsection 2, the initiator of the petition shall file a notice of intention of recall with the municipal clerk of the municipality. A notice of intention of recall under this subsection must include the name, address and contact information of the person filing the notice and the name and position of the official subject to recall under this section along with the reason for the recall. Only a person registered to vote in the Town of Appleton may file a notice of intention of recall under this subsection.

[ 2011, c. 324, §1 (NEW).]

**SECTION 5. Petition forms.**

Within 3 business days of receipt of a notice of intention of recall under subsection 2, the municipal clerk shall prepare petition forms for the collection of signatures under subsection 6 and send notice to the initiator of the petition under subsection 2 that the petition forms are available. The municipality may charge the initiator of the petition a reasonable fee for preparing and providing the petition forms under this subsection. A petition form under this subsection must include:

- A. At the top of the form, the name and position of the official subject to recall, the name and contact information of the initiator of the petition, the full text of the statement of the reasons for the recall of the elected official and the date by which the signatures must be submitted to the municipal clerk under subsection 6; [2011, c. 324, §1 (NEW).]
- B. Spaces for each voter's signature, actual street address and printed name. [2011, c. 324, §1 (NEW).]
- C. Space at the bottom of the form for the name, address and signature of the person circulating the petition form.[2011, c. 324, §1 (NEW).]

**SECTION 6. Collection and submission of signatures.**

A petition form under subsection 5 may be circulated or signed only by a registered voter of the Town Of Appleton. A circulator of a petition form shall fill in the information required under subsection 5, paragraph C and sign the form prior to submission of the form to the municipal clerk. The initiator of the petition under subsection 4 shall collect the petition forms from all circulators and submit the signed petition forms to the municipal clerk within 21 days of receipt of notice from the clerk that the petition forms are available under subsection 5. A municipal clerk may not accept a petition form submitted more than 21 days after sending notice of availability to the initiator under subsection 4. The petition must contain signatures of registered voters of the town of Appleton equal to at least 10% of the number of votes cast in the last gubernatorial election.

[ 2011, c. 324, §1 (NEW) .]

#### **SECTION 7. Petition certification and notification.**

Within 7 business days of receiving petition forms under subsection 6, the municipal clerk shall determine whether the petition forms meet the criteria under subsection 6 and certify the validity of any signatures on the petition forms. If the municipal clerk finds that the number of valid signatures submitted under subsection 6 meets or exceeds the requirements under subsection 6, the clerk shall certify the petition and immediately send notification of the certification to the municipal officers, the initiator of the petition and the official subject to the recall. If the municipal clerk finds the number of valid signatures submitted under subsection 6 does not meet the requirements for a petition under subsection 6, the municipal clerk shall file the petition and the petition forms in the clerk's office and notify the initiator of the petition.

[ 2011, c. 324, §1 (NEW) .]

#### **SECTION 8. Call the Recall Election**

If the petition is certified by the Town Clerk to be sufficient, he or she shall submit the same with his or her certification to the Select Board at their next regular meeting and shall notify the person or persons whose removal is being sought of such action.

The Select Board, upon receipt of the certified petition, shall within ten (10) days time of receipt order an election by secret ballot, pursuant to 30-A MRSA § 2528 to be held not less than 45, nor more than 60 days thereafter, provided that a regular municipal election is not scheduled to be held within 90 days of receipt of the certified petition and, in this case, the Select Board may at their discretion provide for the holding of the recall election on the date of the regular municipal election.

In the event that the Select Board fails to or refuses to order an election as herein provided, the Town Clerk shall call the election to be held not less than 45 days nor more than 60 days following the Select Board's failure or refusal to order the required election.

#### **SECTION 9. Ballots for the Recall Election**

Unless the official or officials whose removal is being sought, have resigned within the ten (10) days of receipt of the petition by the Select Board, the ballots shall be printed and shall read, “ Shall (name of official and his or her title) be Recalled?,” and provide adjacent boxes for “YES” or “NO” responses.

**SECTION 10. Result of Election**

In case a majority of those voting for and against the recall of any elected official shall vote in favor of recalling such official, he or she shall be thereby removed and in that event, the candidate to succeed such person for the balance of the unexpired term shall be determined as provided for in the case of a vacancy in the office.

**SECTION 11. Separability**

It is the intention of the municipality that each section of this ordinance shall be deemed independent of all other sections herein and that if any provision within this ordinance is declared invalid, all other sections shall remain valid and enforceable.

**SECTION 12. Amendments**

This ordinance may be amended by a majority vote of any legal Town meeting when such amendment is published in the warrant calling for the meeting.

**SECTION 13. Certification of Adoption**

I hereby attest that this is a true copy of the Town of Appleton Ordinance for the Recall of Elected Officials duly adopted on June 14, 2017.

\_\_\_\_\_  
Appleton Town Clerk

Appleton Town Seal

June 14, 2017  
Date

# **SHORELAND ZONING ORDINANCE**

## **TOWN OF APPLETON**

### **Section 1. Purposes**

The purposes of this Ordinance are to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect wetlands; to control building sites, placement of structures and land uses; to conserve shore cover, and visual as well as actual points of access to inland waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.

### **Section 2. Authority**

This Ordinance has been prepared in accordance with the provisions of Title 38 Sections 435-449 of the Maine Revised Statutes Annotated (M.R.S.A.).

### **Section 3. Applicability**

This Ordinance applies to all land areas within 250 feet, horizontal distance, of the

- normal high-water line of any great pond or river;
- upland edge of a freshwater wetland;
- and all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream.

This Ordinance also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending or located below the normal high-water line of a water body or within a wetland.

### **Section 4. A. Effective Date of Ordinance and Ordinance Amendments**

This Ordinance, which was adopted by the municipal legislative body on March 23, 1991, shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. A certified copy of the Ordinance, attested and signed by the Town Clerk, shall be forwarded to the Commissioner for approval. If the Commissioner fails to act on this Ordinance or Ordinance Amendment, within forty-five (45) days of his/her receipt of the Ordinance, or Ordinance Amendment, it shall be automatically approved.

Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of this Ordinance, or Ordinance Amendment, if the Ordinance, or Ordinance Amendment, is approved by the Commissioner.

### **B. Repeal of Municipal Timber Harvesting Regulation**

The municipal regulation of timber harvesting activities is repealed on the statutory date established under 38 M.R.S.A. section 438-A(5), at which time the State of Maine Department of Conservation's Bureau of Forestry shall administer timber harvesting standards in the shoreland zone. On the date established under 38 M.R.S.A section 438-A(5), the following provisions of this Ordinance are repealed:

- Section 14. Table of Land Uses, Column 3 (Forest management activities except for timber harvesting) and Column 4 (Timber harvesting);
- Section 15(O) in its entirety; and
- Section 17. Definitions, the definitions of “forest management activities” and “residual basal area”.

NOTE: The statutory date established under 38 M.R.S.A. section 438-B(5) is the effective date of state-wide timber harvesting standards. That date is “the first day of January of the 2<sup>nd</sup> year following the year in which the Commissioner of Conservation determines that at least 252 of the 336 municipalities identified by the Commissioner of Conservation as the municipalities with the highest acreage of timber harvesting activity on an annual basis for the period 1992-2003 have either accepted the state-wide standards or have adopted an ordinance identical to the state-wide standards.” 38 M.R.S.A. section 438-B(5) further provides that “the Commissioner of Conservation shall notify the Secretary of State in writing and advise the Secretary of the effective date of the state-wide standards.”

#### **Section 5. Availability**

A certified copy of this Ordinance shall be filed with the Town Clerk and shall be accessible to any member of the public. Copies shall be made available to the public at reasonable cost at the expense of the person making the request. Notice of availability of this Ordinance shall be posted.

#### **Section 6. Severability**

Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of the Ordinance.

#### **Section 7. Conflicts with Other Ordinances**

Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute administered by the municipality, the more restrictive provision shall control.

#### **Section 8. Amendments**

This Ordinance may be amended in part or in whole by majority vote of the citizens of the Town at a regular or special Town meeting. Copies of amendments, attested and signed by the Town Clerk, shall be submitted to the Commissioner following adoption by the Town and shall not be effective unless approved by the Commissioner. If the Commissioner fails to act on any amendment within forty-five (45) days of the receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of the amendment, if such amendment is approved by the Commissioner.

#### **Section 9. Districts and Zoning Map**

##### **A. Official Shoreland Zoning Map**

The areas to which this Ordinance is applicable are hereby divided into the following districts as shown on the “Official Shoreland Zoning Map dated June 10, 2009 a copy of which is on file at the Town Office and is available for public inspection during regular office hours.

**DISTRICTS:**

1. Resource Protection
2. Limited Residential
3. Limited Commercial
4. Stream Protection

**B. Scale of Map**

The Official Shoreland Zoning Map shall be drawn at a scale of: 1 inch = 1,000 feet. District boundaries shall be clearly delineated and a legend indicating the symbols for each district shall be placed on the map.

**C. Certification of Official Shoreland Zoning Map**

The Official Shoreland Zoning Map shall be certified by the attested signature of the Town Clerk and shall be located in the Town office.

**D. Changes to the Official Shoreland Zoning Map**

If amendments, in accordance with Section 8, are made in the district boundaries or other matter portrayed on the Official Shoreland Zoning Map, such changes shall be made on the Official Shoreland Zoning Map within thirty (30) days after the amendment has been approved by the Commissioner of the Department of Environmental Protection.

**Section 10. Interpretation of District Boundaries**

Unless otherwise set forth on the Official Shoreland Zoning Map, district boundary lines are property lines, the centerlines of streets, roads and rights of way, and the boundaries of the shoreland area as defined herein. The depiction of the shoreland districts on the Shoreland Zoning map for the Town of Appleton are merely illustrative of their general location. The boundaries of these districts shall be determined by measurement of the distance indicated on the maps from the normal high-water line of the waterbody or from the upland edge of wetland vegetation, regardless of the location of the boundary shown on the map. Where uncertainty exists as to the exact location of district boundary lines, the Board of Appeals shall be the final authority as to location.

**Section 11. Land Use Requirements**

Except as hereinafter specified, no building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, expanded, moved, or altered and no new lot shall be created except in conformity with all of the regulations herein specified for the district in which it is located, unless a variance is granted.

**Section 12. Non-conformance****A. Purpose**

It is the intent of this Ordinance to promote land use conformities, except that non-conforming conditions that existed before the effective date of this Ordinance or amendments thereto shall be allowed to continue, subject to the requirements set forth in this section. Except as otherwise provided in this Ordinance, a non-conforming condition shall not be permitted to become more non-conforming.

**B. General**

1. Transfer of Ownership: Non-conforming structures, lots, and uses may be transferred and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this Ordinance.
2. Repair and Maintenance: This Ordinance allows, without a permit, the normal upkeep and maintenance of non-conforming uses and structures including repairs or renovations that do not involve expansion of the non-conforming use or structure, and such other changes in a non-conforming use or structure as federal, state, or local building and safety codes may require.

**C. Non-conforming Structures**

1. Expansions: A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure and is in accordance with subparagraphs (a) and (b) below.

## Further Limitations:

a.) After January 1, 1989 if any portion of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure shall not be expanded in floor area or volume, by 30% or more, during the lifetime of the structure. If a replacement structure conforms with the requirements of Section 12(C)(3), and is less than the required setback from a water body, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by 30% in floor area and volume since that date.

b.) Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Section 12(C)(2) Relocation, below. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 12(C)(1)(a) above, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.

c.) No structure which is less than the required setback from the normal high-water line of a water body, tributary stream, or upland edge of a wetland shall be expanded toward the water body, tributary stream, or wetland.

## 2. Relocation:

A non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules-(Rules), or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming.

In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

a. Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.

Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

b. Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.

3. Reconstruction or Replacement:

Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity.

If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section 12(C)(1) above, as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 12(C)(2) above.

Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by 50% or less of the market value, or damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained from the Code Enforcement Officer within one year of such damage, destruction, or removal.



In determining whether the building reconstruction or replacement meets the water setback to the greatest practical extent the Planning Board shall consider in addition to the criteria in paragraph Section 12(C)(2) above, the physical condition and type of foundation present, if any.

#### 4. Change of Use of a Non-conforming Structure

The use of a non-conforming structure may not be changed to another use unless the Planning Board after receiving a written application determines that the new use will have no greater adverse impact on the water body tributary stream or wetland, or on the subject or adjacent properties and resources than the existing use.

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

### D. Non-conforming Uses

1.) Expansions: Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as allowed in Section 12(C)(1)(a) above.

2.) Resumption Prohibited: A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding five (5) year period.

3.) Change of Use: An existing non-conforming use may be changed to another non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources than the former use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in Section 12 (C) (4) above.

### E. Non-conforming Lots

1.) Non-conforming Lots: A non-conforming lot of record as of the effective date of this Ordinance or amendment thereto may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot area, lot width and shore frontage can be met. Variances relating to setback or other requirements not involving lot area, lot width or shore frontage shall be obtained by action of the Board of Appeals.

2.) Contiguous Built Lots: If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law and Subsurface Wastewater Disposal Rules -are complied with.

If two or more principal uses or structures existed on a single lot of record on the effective date of this ordinance, each may be sold on a separate lot provided that the above referenced law and rules are complied with. When such lots are divided each lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance.

3.) Contiguous Lots - Vacant or Partially Built: If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this Ordinance, if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure the lots shall be combined to the extent necessary to meet the dimensional requirements.

This provision shall not apply to 2 or more contiguous lots, at least one of which is non-conforming, owned by the same person or persons on the effective date of this Ordinance and recorded in the registry of deeds if the lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules; and

(a) Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or

(b) Any lots that do not meet the frontage and lot size requirements of Section 12(E)(3)(a) are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

## Section 13. Establishment of Districts

### A. Resource Protection District

The Resource Protection District includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This district shall include the following areas when they occur within the limits of the shoreland zone, exclusive of the Stream Protection District, except that areas which are currently developed and areas which meet the criteria for the Limited Commercial District need not be included within the Resource Protection District.

1.) Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) that are depicted on a Geographic Information System (GIS) data layer maintained by either MDIF&W or the Department as of May 1, 2006. For the purposes of this paragraph "wetlands associated with great ponds and rivers" shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond or river, and have a surface elevation at or below the water level of the great pond or river during the period of normal high water. "Wetlands associated with great ponds or rivers" are considered to be part of that great pond or river.

2.) Areas designated as "Significant Wildlife Habitat". Significant Wildlife Habitat includes: Habitats for species appearing on the official state or federal lists of endangered or threatened species; high and moderate value deer wintering areas and travel corridors as defined by the Department of Inland Fisheries and Wildlife; high and moderate value waterfowl and wading bird habitats, including nesting and feeding areas as defined by the

Department of Inland Fisheries and Wildlife; critical spawning and nursery areas for Atlantic sea run salmon as defined by the Atlantic Sea Run Salmon Commission; and shorebird nesting, feeding and staging areas as defined by the Department of Inland Fisheries and Wildlife;

3.) Flood plains along rivers and flood plains along artificially formed great ponds along rivers, defined by the 100-year flood plain as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils;

4.) Areas of two or more contiguous acres with sustained slopes of 20% or greater;

5.) Areas of two (2) or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater wetland as defined, and which are not surficially connected to a water body during the period of normal high water;

6.) Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement;

7.) Areas with natural sites of significant scenic or aesthetic value;

8.) Areas designated by federal, state or municipal governments as natural areas of significance to be protected from development; and,

9.) Other significant areas which should be included in this district to fulfill the purposes of this Ordinance, such as, but not limited to, existing public access areas and certain significant archaeological and historic sites deserving of long-term protection as determined by the municipality after consultation with the Maine Historic Preservation Commission.

#### **B. Limited Residential District**

The Limited Residential District includes those areas suitable for residential and recreational development. It includes areas other than those in the Resource Protection District, or Stream Protection District, and areas which are used less intensively than those in the Limited Commercial.

#### **C. Limited Commercial District**

The Limited Commercial District includes areas of mixed, light commercial and residential uses, exclusive of the Stream Protection District. This district includes areas of two or more contiguous acres in size devoted to a mix of residential and low intensity business and commercial uses. Industrial uses are prohibited.

#### **D. Stream Protection District**

The Stream Protection District includes all land areas within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream, exclusive of those areas within two-hundred and fifty (250) feet, horizontal distance, of the normal high-water line of a great pond or river, or within two hundred and fifty (250) feet, horizontal distance, of the upland edge of a freshwater wetland. Where a stream and its associated shoreland area is located within two-hundred and fifty (250) feet, horizontal distance, of

the above water bodies or wetlands, that land area shall be regulated under the terms of the shoreland district associated with that water body or wetland.

#### **Section 14. Table of Land Uses**

All land use activities, as indicated in Table 1, Land Uses in the Shoreland Zone, shall conform with all of the applicable land use standards in Section 15. The district designation for a particular site shall be determined from the Official Shoreland Zoning Map.

Key to Table 1:

Yes - Allowed (no permit required but the use must comply with all applicable land use standards.)

No - Prohibited

PB - Allowed with permit issued by the Planning Board

CEO - Allowed with permit issued by the Code Enforcement Officer

LPI - Allowed with permit issued by the Local Plumbing Inspector

Abbreviations:

SP - Stream Protection

RP - Resource Protection

LR - Limited Residential

LC - Limited Commercial

Appleton Shoreland Zoning Ordinance:

Table 1. Land uses in the Shoreland Zone	DISTRICTS			
	SP	RP	LR	LC
LAND USES				
1. Non-intensive recreational uses not requiring structure, such as hunting, fishing & hiking	yes	yes	yes	yes
2. Motorized vehicular traffic on existing roads & trails, snowmobiling	yes	yes	yes	yes
3. Forest management activities except timber harvesting	yes	yes	yes	yes
4. Timber harvesting *	yes	CEO	yes	yes
5. Clearing or removal of vegetation for activities other than timber harvesting	CEO	CEO <sup>1</sup>	yes	yes
6. Fire prevention activities	yes	yes	yes	yes
7. Wildlife management practices	yes	yes	yes	yes
8. Soil & water conservation practices	yes	yes	yes	yes
9. Mineral exploration *	no	yes <sup>2</sup>	yes <sup>2</sup>	yes <sup>2</sup>
10. Mineral extraction, including sand & gravel extraction	no	PB <sup>3</sup>	PB	PB
11. Surveying & resource analysis	yes	yes	yes	yes
12. Emergency operations as defined in Section 17	yes	yes	yes	yes
13. Agriculture *	yes	PB	yes	yes
14. Aquaculture *	PB	PB	PB	yes
15. Principle structures, uses & activities				
a. One & two-family residential, including driveways	PB <sup>4</sup>	PB <sup>8</sup>	CEO	CEO
b. Multi-unit residential	no	no	PB	PB
c. Commercial	no	no <sup>9</sup>	no <sup>9</sup>	PB
d. Industrial	no	no	no	no
e. Governmental & institutional	no	no	PB	PB
f. Small nonresidential facilities for educational, scientific or nature interpretation purposes	PB <sup>4</sup>	PB	CEO	CEO
16. Structures accessory to allowed uses	PB <sup>4</sup>	PB	CEO	CEO
17. Piers, docks, wharves, bridges & other structures & uses extending over or below the normal high water line or within a wetland				
a. Temporary	CEO <sup>10</sup>	CEO <sup>10</sup>	CEO <sup>10</sup>	CEO <sup>10</sup>
b. Permanent	PB	PB	PB	PB
18. Conversions of seasonal residences to year-round residences	LPI	LPI	LPI	LPI

19. Home occupations	PB	PB	PB	CEO
20. Private sewage disposal systems for allowed uses	LPI	LPI	LPI	LPI
21. Essential services	CEO <sup>5</sup>	CEO <sup>5</sup>	yes <sup>11</sup>	yes <sup>11</sup>
A. Roadside distribution lines (34.5 kV and lower)	PB <sup>5</sup>	PB <sup>5</sup>	CEO	CEO
B. Non-roadside or cross-country distribution lines involving 10 poles or fewer in the shoreland zone	PB <sup>5</sup>	PB <sup>5</sup>	PB	PB
C. Non-roadside or cross-country distribution lines involving 11 poles or more in the shoreland zone	PB <sup>5</sup>	PB <sup>5</sup>	PB	PB
D. Other essential services	PB <sup>5</sup>	PB <sup>5</sup>	PB	PB
22. Service drops, as defined, to allowed uses	yes	yes	yes	yes
23. Public & private recreational facilities involving minimal structural development	PB	PB	PB	CEO
24. Individual private campsites	CEO	CEO	CEO	CEO
25. Campgrounds	no	no <sup>6</sup>	PB	PB
26. Road construction	PB	no <sup>7</sup>	PB	PB
27. Land management roads	yes	PB	yes	yes
28. Parking facilities	no	no <sup>6</sup>	PB	PB
29. Marinas	PB	no	PB	PB
30. Filling & earth moving of less than 10 cubic yds.	CEO	CEO	yes	yes
31. Filling & earth moving of more than 10 cubic yds.	PB	PB	CEO	CEO
32. Signs *	yes	yes	yes	yes
33. Uses similar to allowed uses	CEO	CEO	CEO	CEO
34. Uses similar to uses requiring CEO permit	CEO	CEO	CEO	CEO
35. Uses similar to uses requiring PB permit	PB	PB	PB	PB

ABBREVIATIONS for Table 1:

- SP — Stream Protection
- RP — Resource Protection
- LR — Limited Residential
- LC — Limited Commercial

Yes — Allowed (no permit required but the use must comply with all applicable land use standards).

No — Prohibited

PB — Requires permit issued by the Planning Board

CEO — Requires permit issued by the Code Enforcement Officer

LPI — Requires permit issued by Local Plumbing Inspector

NOTES:

- 1 - In RP not allowed within 75 feet horizontal distance, of the normal high-water line of great ponds, except to remove safety hazards.
- 2 - Requires permit from CEO if more than 100 square feet of surface area, in total, is disturbed.
- 3 - In RP not allowed if so designated because of wildlife value.
- 4 - Provided that a variance from the setback is obtained from the Board of Appeals.
- 5 - See further restrictions in Section 15 (L), Land Use Standards - Essential Services.
- 6 - Except when area is zoned for RP due to flood plain criteria, in which case a Planning Board permit is required.
- 7 - Except as provided in Section 15(H)(3).

- 8 - Single family residential structures may be allowed by special exception only according to the provisions of Section 16(E), Special Exceptions. Two-family residential structures are prohibited.
- 9 - Except for commercial uses otherwise listed in this Table, such as marinas and campgrounds, that are allowed in the respective district.
- 10 - Excluding bridges and other crossings not involving earthwork, in which case no permit is required.
- 11 - Permit not required but must file a written "notice of intent to construct" with CEO.
- \* - Subject to specific land use standards, Section 15.

NOTE: A person performing any of the following activities shall require a permit from the Department of Environmental Protection, pursuant to 38 operates in such a manner that material or soil may be washed into them:

- A. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;
- B. Draining or otherwise dewatering;
- C. Any construction or alteration of any permanent structure.

**Section 15. Land Use Standards**

All land use activities within the shoreland zone shall conform with the following provisions, if applicable.

**A. Minimum Lot Standards**

1.	Minimum Lot Area (sq.ft)	Min. Shore (Frontage-ft)
(a) Residential per dwelling unit	<u>43.560</u>	<u>200</u>
Governmental, Institutional, Commercial or Industrial per principal structure	<u>65.340</u>	<u>300</u>
Public and Private Recreational Facilities	<u>43.560</u>	<u>200</u>

2. Land below the normal high-water line of a water body or upland edge of a wetland and land beneath roads serving more than two (2) lots shall not be included toward calculating minimum lot area.

3. Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.

4. The minimum width of any portion of any lot within one hundred (100) feet, horizontal distance, of the normal high-water line of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.

5. If more than one residential dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.

**B. Principal and Accessory Structures**

1. All new principal and accessory structures shall be set back at least one hundred (100) feet, horizontal distance, from the normal high-water line of great ponds classified GPA and rivers that flow to great ponds classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary

streams, or the upland edge of a wetland. In the Resource Protection District the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified above shall apply.

In addition:

a.) The water body, tributary stream or wetland setback provision shall neither apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.

b.) The Planning Board may increase the required setback of a proposed structure, as a condition to permit approval, if necessary to accomplish the purposes of this Ordinance. Instances where a greater setback may be appropriate include, but are not limited to, areas of steep slope, shallow or erodable soils, or where an adequate vegetative buffer does not exist.

2. Principal or accessory structures and expansions of existing structures which are permitted in the Resource Protection, Limited Residential, Limited Commercial, and Stream Protection Districts, shall not exceed thirty-five (35) feet in height. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.

3. The lowest floor elevation or openings of all buildings and structures including basements shall be elevated at least one foot above the elevation of the 100 year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood plain soils.

4. The total footprint area of all structures, parking lots and other non-vegetated surfaces, within the shoreland zone shall not exceed twenty (20) percent of the lot or a portion thereof, located within the shoreland zone, including land area previously developed.

5. Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:

- (a) The site has been previously altered and an effective vegetated buffer does not exist;
- (b) The wall(s) is(are) at least 25 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;
- (b) The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;
- (c) The total height of the wall(s), in the aggregate, are no more than 24 inches;
- (e) Retaining walls are located outside of the 100-year floodplain on rivers, streams, and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA)



Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils.

- (f) The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and
- (g) A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:
  - (i) The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;
  - (ii) Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;
  - (i) Only native species may be used to establish the buffer area;
  - (ii) A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;
  - (iii) A footpath not to exceed the standards in Section 15(P)(2)(a), may traverse the buffer;

6. Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided; that the structure is limited to a maximum of four (4) feet in width; that the structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland, unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A., Section 480-C; and that the applicant demonstrates that no reasonable access alternative exists on the property.

**C. Piers, Docks, Wharf, Bridges and Other Structures and Uses Extending Over or Below the Normal High-Water Line of a Water Body or Within a Wetland.**

1. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
2. The location shall not interfere with existing developed or natural beach areas.
3. The facility shall be located so as to minimize adverse effects on fisheries.
4. The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A temporary pier, dock or wharf shall not be wider than six feet for non-commercial uses.
5. No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity.

6. New permanent piers and docks shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.

7. No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district.

8. Structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.

NOTE: Permanent structures projecting into or over water bodies shall require a permit from the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A., section 480-C. Permits may also be required from the Army Corps of Engineers if located in navigable waters.

#### **D. Campgrounds**

Campgrounds shall conform to the minimum requirements imposed under State licensing procedures and the following:

1. Campgrounds shall contain a minimum of five thousand (5,000) square feet of land, not including roads and driveways, for each site. Land supporting wetland vegetation, and land below the normal high-water line of a water body shall not be included in calculating land area per site.
2. The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.

#### **E. Individual Private Campsites**

Individual, private campsites not associated with campgrounds are allowed provided the following conditions are met:

1. One campsite per lot existing on the effective date of this Ordinance, or forty-three thousand five-hundred and sixty (43,560) square feet of lot area within the shoreland zone, whichever is less, may be permitted.
2. Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified GPA or river flowing to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.
3. Only one recreational vehicle shall be allowed on a campsite. The recreational vehicle shall not be located on any type of permanent foundation except for a gravel pad, and no structure except a canopy shall be attached to the recreational vehicle.

4. The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a Resource Protection District shall be limited to one thousand (1000) square feet.
5. A written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the Local Plumbing Inspector. Where disposal is off-site, written authorization from the receiving facility or land owner is required.
6. When a recreational vehicle, tent or similar shelter is placed on-site for more than one hundred and twenty (120) days per year, all requirements for residential structures shall be met, including the installation of a subsurface sewage disposal system in compliance with the State of Maine Subsurface Wastewater Disposal Rules, unless served by public sewage facilities.

#### **F. Commercial and Industrial Uses**

The following new commercial and industrial uses are prohibited within the shoreland zone adjacent to great ponds classified GPA, and rivers and streams which flow to great ponds classified GPA:

- a.) Auto washing facilities
- b.) Auto or other vehicle service and/or repair operations, including body shops
- c.) Chemical and bacteriological laboratories
- d.) Storage of chemicals, including herbicides, pesticides or fertilizers other than amounts normally associated with individual households or farms
- e.) Commercial painting, wood preserving, and furniture stripping
- f.) Dry cleaning establishments
- g.) Electronic circuit assembly
- h.) Laundromats, unless connected to a sanitary sewer
- i.) Metal plating, finishing, or polishing
- j.) Petroleum or petroleum product storage and/or sale except storage on same property as use occurs and except for storage and sales associated with marinas
- k.) Photographic processing
- l.) Printing

#### **G. Parking Areas**

1. Parking areas shall meet the shoreline and tributary stream setback requirements for structures for the district in which such areas are located, except that the setback requirement for parking areas serving public boat launching facilities may be reduced to no less than fifty (50) feet, horizontal distance, from the shoreline or tributary stream if the Planning Board finds that no other reasonable alternative exists.
2. Parking areas shall be adequately sized for the proposed use and shall be designed to prevent stormwater runoff from flowing directly into a water body, tributary stream or wetland and where feasible, to retain all runoff on-site.
3. In determining the appropriate size of proposed parking facilities, the following shall apply:

a. Typical parking space: Approximately ten (10) feet wide and twenty (20) feet long, except that parking spaces for a vehicle and boat trailer shall be forty (40) feet long.

b. Internal travel aisles: Approximately twenty (20) feet wide.

## H. Roads and Driveways

The following standards shall apply to the construction of roads and/or driveways and drainage systems, culverts and other related features.

1. Roads and driveways shall be set back at least one-hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified GPA or a river that flows to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the road and/or driveway setback requirement shall be no less than fifty (50) feet, horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream, or wetland.

On slopes of greater than twenty (20) percent the road and/or driveway setback shall be increased by ten (10) feet, horizontal distance, for each five (5) percent increase in slope above twenty (20) percent.

Section 15 (H)(1) does not apply to approaches to water crossings or to roads or driveways that provide access to permitted structures and facilities located nearer to the shoreline or tributary stream due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of Section 15(H)(1) except for that portion of the road or driveway necessary for direct access to the structure.

2. Existing public roads may be expanded within the legal road right-of-way regardless of its setback from a water body, tributary stream or wetland.

3. New roads and driveways are prohibited in a Resource Protection District except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district. A road or driveway may also be approved by the Planning Board in a Resource Protection District, upon a finding that no reasonable alternative route or location is available outside the district. When a road or driveway is permitted in a Resource Protection District the road and/or driveway shall be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.

4. Road and driveway banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section 15 (Q).

5. Road and driveway grades shall be no greater than ten (10) percent except for segments of less than two hundred (200) feet.

6. In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams or wetlands, roads and driveways shall be designed, constructed,

and maintained to empty onto an unscarified buffer strip at least (50) feet plus two times the average slope, in width between the outflow point of the ditch or culvert and the normal high-water line of a water body, tributary stream, or upland edge of a wetland. Surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.

7. Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow gains sufficient volume or head to erode the road, driveway, or ditch. To accomplish this, the following shall apply:

- a. Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road or driveway at intervals no greater than indicated in the following table:

<u>Grade (Percent)</u>	<u>Spacing (Feet)</u>
0-2	250
3-5	200-135
6-10	100-80
11-15	80-60
16-20	60-45
21+	40

- b. Drainage dips may be used in place of ditch relief culverts only where the grade is ten (10) percent or less.

c. On sections having slopes greater than ten (10) percent, ditch relief culverts shall be placed at approximately a thirty (30) degree angle downslope from a line perpendicular to the centerline of the road or driveway.

d. Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning, and their inlet and outlet ends shall be stabilized with appropriate materials.

8. Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning.

**I. Signs**

The following provisions shall govern the use of signs in the Resource Protection, Limited Residential, Limited Commercial and Stream Protection Districts:

1. Signs relating to goods and services sold on the premises shall be allowed, provided that such signs shall not exceed six (6) square feet in area and shall not exceed two (2) signs per premises. Signs relating to goods or services not sold or rendered on the premises shall be prohibited.

2. Name signs shall be allowed, provided such signs shall not exceed two (2) signs per premises, and shall not exceed twelve (12) square feet in the aggregate.

3. Residential users may display a single sign not over three (3) square feet in area relating to the sale, rental, or lease of the premises.
4. Signs relating to trespassing and hunting shall be allowed without restriction as to number provided that no such sign shall exceed two (2) square feet in area.
5. Signs relating to public safety shall be allowed without restriction.
6. No sign shall extend higher than twenty (20) feet above the ground.
7. Signs may be illuminated only by shielded, non-flashing lights.

#### **J. Storm Water Runoff**

1. All new construction and development shall be designed to minimize storm water runoff from the site in excess of the natural predevelopment conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas shall be retained in order to reduce runoff and encourage infiltration of stormwaters.
2. Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.

NOTE: The Stormwater Management Law (38 M.R.S.A. section 420-D) requires a full permit to be obtained from the DEP prior to construction of a project consisting of 20,000 square feet or more of impervious area or 5 acres or more of a developed area in an urban impaired stream watershed or most-at-risk lake watershed, or a project with 1 acre or more of developed area in any other stream, coastal or wetland watershed. A permit-by-rule is necessary for a project with one acre or more of disturbed area but less than 1 acre impervious area (20,000 square feet for most-at-risk lakes and urban impaired streams) and less than 5 acres of developed area. Furthermore, a Maine Construction General Permit is required if the construction will result in one acre or more of disturbed area.

#### **K. Septic Waste Disposal**

1. All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules and the following: a) clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than seventy-five (75) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland and b) a holding tank is not allowed for a first-time residential use in the shoreland zone.

NOTE: The Maine Subsurface Wastewater Disposal Rules require new systems, excluding fill extensions, to be constructed no less than one hundred (100) horizontal feet from the normal high-water line of a perennial water body. The minimum setback distance for a new subsurface disposal system may not be reduced by variance.

#### **L. Essential Services**

1. Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.

2. The installation of essential services, other than road-side distribution lines, is not allowed in a Resource Protection or Stream Protection District, except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. Where allowed, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.
3. Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

#### **M. Mineral Exploration and Extraction**

Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than one hundred (100) square feet of ground surface. A permit from the Code Enforcement Officer shall be required for mineral exploration which exceeds the above limitation. All excavations, including test pits and holes shall be immediately capped, filled or secured by other equally effective measures, to restore disturbed areas and to protect the public health and safety.

Mineral extraction may be permitted under the following conditions:

1. A reclamation plan shall be filed with, and approved by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of Section 15 (M)(3) below.
2. No part of any extraction operation, including drainage and runoff control features shall be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and within seventy-five (75) feet, horizontal distance, of the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland. Extraction operations shall not be permitted within fifty (50) feet, horizontal distance, of any property line, without written permission of the owner of such adjacent property.
3. Within twelve (12) months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than one hundred (100) cubic yards of materials are removed in any consecutive twelve (12) month period, ground levels and grades shall be established in accordance with the following:
  - a. All debris, stumps, and similar material shall be removed for disposal in an approved location, or shall be buried on-site. Only materials generated on-site may be buried or covered on-site.

NOTE: The State of Maine Solid Waste Laws, 38, M.R.S.A. section 1310 and the solid waste management rules, Chapters 400-419 of the Chapter 404 of the Department of Environmental Protection's regulations may contain other applicable provisions regarding disposal of such materials.

  - b. The final graded slope shall be two to one (2:1) slope or flatter.
  - c. Topsoil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.

4. In keeping with the purposes of this Ordinance, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.

#### **N. Agriculture**

1. All spreading of manure shall be accomplished in conformance with the *Manure Utilization Guidelines* published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. sections 4201-4209).

2. Manure shall not be stored or stockpiled within one hundred (100) feet, horizontal distance, of a great pond classified GPA or a river flowing to a great pond, classified GPA, or within seventy-five (75) feet horizontal distance, of other water bodies, tributary streams, or wetlands. All manure storage areas within the shoreland zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water.

3. Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area, within the shoreland zone shall require a Conservation Plan to be filed with the Planning Board. Non-conformance with the provisions of said plan shall be considered to be a violation of this Ordinance.

4. There shall be no new tilling of soil within one-hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within seventy-five (75) feet, horizontal distance, from other water bodies; nor within twenty-five feet, horizontal distance, of tributary streams, and wetlands. Operations in existence on the effective date of this ordinance and not in conformance with this provision may be maintained.

5. Newly established livestock grazing areas shall not be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within seventy-five (75) feet, horizontal distance of other water bodies, nor; within twenty-five (25) feet, horizontal distance, of tributary streams, and wetlands. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan.

#### **O. Timber Harvesting**

(1) In a Resource Protection District abutting a great pond, timber harvesting shall be limited to the following:

(a) Within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, timber harvesting may be conducted when the following conditions are met:

- (1) The ground is frozen;
- (2) There is no resultant soil disturbance;
- (3) The removal of trees is accomplished using a cable or boom and there is no entry of tracked or wheeled vehicles into the 75-foot strip of land;
- (4) There is no cutting of trees less than 6 inches in diameter; no more than 30% of the trees 6 inches or more in diameter, measured at 4 ½ feet above ground level, are cut in any 10-



- year period; and a well-distributed stand of trees and other natural vegetation remains;  
and
- (5) A licensed professional forester has marked the trees to be harvested prior to a permit being issued by the municipality.
- (b) Beyond the 75 foot strip referred to in Section 15(O)(1)(a) above, timber harvesting is permitted in accordance with paragraph 2 below except that in no case shall the average residual basal area of trees over 4 ½ inches in diameter at 4 1/2 feet above ground level be reduced to less than 30 square feet per acre.

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NOTE: Consistent with 38 M.R.S.A. section 439-A(5)(B), a municipality may elect to replace subparagraph 15(O)(1)(a) with the following: (a) Within the strip of land extending 75 feet inland from the normal high-water line in a shoreland area zoned for resource protection abutting a great pond there shall be no timber harvesting except to remove safety hazards.

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- (2) Except in areas as described in Section 15(O)(1) above, timber harvesting shall conform with the following provisions:
- (a) Selective cutting of no more than forty (40) percent of the total volume of trees four (4) inches or more in diameter measured at 4 1/2 feet above ground level on any lot in any ten (10) year period is permitted. In addition:
- (i) Within one-hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and within seventy-five (75) feet, horizontal distance, of the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland, there shall be no clearcut openings and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.
- (ii) At distances greater than one-hundred (100) feet, horizontal distance, of a great pond classified GPA or a river flowing to a great pond classified GPA, and greater than seventy-five (75) feet, horizontal distance, of the normal high-water line of other water bodies or the upland edge of a wetland, harvesting operations shall not create single clearcut openings greater than ten-thousand (10,000) square feet in the forest canopy. Where such openings exceed five-thousand (5000) square feet they shall be at least one hundred (100) feet, horizontal distance, apart. Such clearcut openings shall be included in the calculation of total volume removal. Volume may be considered to be equivalent to basal area.

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NOTE: Subparagraph 15 (O)(2)(b) below, should be included only if a municipality desires to permit harvesting operations to exceed 40% of the volume of trees in a 10-year period if necessary for good forest management. The adoption of subparagraph 15(O)(2)(b) is not a requirement.

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- (b) Timber harvesting operations exceeding the 40% limitation in Section 15(O)(2)(a) above, may be allowed by the planning board upon a clear showing, including a forest management plan signed by a Maine licensed professional forester, that such an exception is necessary for good forest management and will be carried out in accordance with the purposes of this Ordinance. The planning board shall notify the Commissioner of the Department of Environmental Protection of each exception allowed, within fourteen (14) days of the planning board's decision.

- (c) No accumulation of slash shall be left within fifty (50) feet, horizontal distance, of the normal high-water line of a water body. In all other areas slash shall either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than four (4) feet above the ground. Any debris that falls below the normal high-water line of a water body or tributary stream shall be removed.
- (d) Timber harvesting equipment shall not use stream channels as travel routes except when:
  - (i) Surface waters are frozen; and
  - (ii) The activity will not result in any ground disturbance.
- (e) All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.
- (f) Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil revegetated.
- (g) Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least seventy-five (75) feet, horizontal distance, in width for slopes up to ten (10) percent shall be retained between the exposed mineral soil and the normal high-water line of a water body or upland edge of a wetland. For each ten (10) percent increase in slope, the unscarified strip shall be increased by twenty (20) feet, horizontal distance. The provisions of this paragraph apply only to a face sloping toward the water body or wetland, provided, however, that no portion of such exposed mineral soil on a back face shall be closer than twenty five (25) feet, horizontal distance, from the normal high-water line of a water body or upland edge of a wetland.

#### **P. Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting**

1. In a Resource Protection District abutting a great pond, there shall be no cutting of vegetation within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards.  
Elsewhere, in any Resource Protection District the cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized in that district.
2. Except in areas as described in Section (P)(1), above, and except to allow for the development of permitted uses, within a strip of land extending one-hundred (100) feet, horizontal distance, inland from the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from any other water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:
  - a. There shall be no cleared opening greater than 250 square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a footpath

not to exceed six (6) feet in width as measured between tree trunks and/or shrub stems is allowed provided that a cleared line of sight to the water through the buffer strip is not created.

- b. Selective cutting of trees within the buffer strip is allowed provided that a well distributed stand of trees and other natural vegetation is maintained. For the purposes of Section 15(P)(2)(b) a "well-distributed stand of trees" adjacent to a great pond classified GPA or a river or stream flowing to a great pond classified GPA, shall be defined as maintaining a rating score of 24 or more in each 25-foot by 50-foot rectangular (1250 square feet) area as determined by the following rating system.

<u>Diameter of Tree at 4-1/2 feet Above Ground Level (inches)</u>	<u>Points</u>
2 - 4 in.	1
>4 - 8 in.	2
>8 - 12 in.	4
12 in. or greater	8

Adjacent to other water bodies, tributary streams, and wetlands, a "well-distributed stand of trees" is defined as maintaining a minimum rating score of 16 per 25-foot by 50-foot rectangular area.

Note:As an example, adjacent to a great pond, if a 25-foot x 50-foot plot contains four (4) trees between 2 and 4 inches in diameter, two trees between 4 and 8 inches in diameter, three trees between 8 and 12 inches in diameter, and two trees over 12 inches in diameter, the rating score is:

$$(4 \times 1) + (2 \times 2) + (3 \times 4) + (2 \times 8) = 36 \text{ points}$$

Thus, the 25-foot by 50-foot plot contains trees worth 36 points. Trees totaling 12 points (36-24 =12) may be removed from the plot provided that no cleared openings are created.

The following shall govern in applying this point system:

- (i) The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;
- (ii) Each successive plot must be adjacent to, but not overlap a previous plot;
- (iii) Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this Ordinance;
- (iv) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by is Ordinance;
- (v) Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

For the purposes of Section 15(P)(2)(b) "other natural vegetation" is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one half (4 ½) feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 5 saplings have been recruited into the plot.

Notwithstanding the above provisions, no more than 40% of the total volume of trees four (4) inches or more in diameter, measured at 4 1/2 feet above ground level may be removed in any ten (10) year period.

- c. In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or other permitted uses as described in Section 15 (P) paragraphs (2) and (2a) above.
- d. Pruning of tree branches, on the bottom 1/3 of the tree is allowed.
- e. In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.

The provisions contained in Section 15(P)(2) above shall not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum area necessary.

3. At distances greater than one hundred (100) feet, horizontal distance, from a great pond classified GPA or a river flowing to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland, there shall be allowed on any lot, in any ten (10) year period, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty (40) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.

In no event shall cleared openings for any purpose, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, 25% of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, including land previously cleared.

4. Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Ordinance.
5. Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section 15 (P).

#### **Q. Erosion and Sedimentation Control**

1. All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall also require a written soil erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:
  - a.) Mulching and revegetation of disturbed soil.

- b.) Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
  - c.) Permanent stabilization structures such as retaining walls or riprap.
2. In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.
  3. Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.
  4. Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases permanent stabilization shall occur within nine (9) months of the initial date of exposure.

In addition:

- a.) Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.
  - b.) Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
  - c.) Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.
5. Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainageways shall be designed and constructed in order to carry water from a twenty five (25) year storm or greater, and shall be stabilized with vegetation or lined with rip-rap.

#### **R. Soils**

All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses, shall require a soils report based on an on-site investigation and be prepared by state-certified professionals. Certified persons may include Maine Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems

appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist.

#### **S. Water Quality**

No activity shall deposit on or into the ground or discharge to the waters of the State any pollutant that, by itself or in combination with other activities or substances will impair designated uses or the water classification of the water body, tributary stream or wetland.

#### **T. Archaeological Sites**

Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places, as determined by the permitting authority shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least twenty (20) days prior to action being taken by the permitting authority. The permitting authority shall consider comments received from the Commission prior to rendering a decision on the application.

### **Section 16. Administration**

#### **A. Creation of Administering Bodies and Agents**

1. Code Enforcement Officer  
A Code Enforcement Officer shall be appointed or reappointed annually.
2. Board of Appeals  
A Board of Appeals shall be created pursuant to the provisions of 30-A M.R.S.A. Section 2691.
3. Planning Board  
A Planning Board shall be created in accordance with the provisions of State law.

#### **B. Permits Required**

After the effective date of this Ordinance no person shall, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit in the district in which such activity or use would occur; or expand, change, or replace an existing use or structure; or renew a discontinued nonconforming use. A person who is issued a permit pursuant to this Ordinance shall have a copy of the permit on site while the work authorized by the permit is performed.

1. A permit is not required for the replacement of an existing road culvert as long as:
  - (a) The replacement culvert is not more than 25% longer than the culvert being replaced;
  - (b) The replacement culvert is not longer than 75 feet; and
  - (c) Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the watercourse.

- (2) A permit is not required for an archaeological excavation as long as the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's level 1 or level 2 approved list, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.
- (3) Any permit required by this Ordinance shall be in addition to any other permit required by other law or ordinance.

### **C. Permit Application**

1. Every applicant for a permit shall submit a written application, including a scaled site plan, on a form provided by the Town, to the appropriate official as indicated in Section 14.
2. All applications shall be signed by an owner or individual who can show evidence of right, title or interest in the property or by an agent, representative, tenant, or contractor of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct.
3. All applications shall be dated, and the Code Enforcement Officer or Planning Board, as appropriate, shall note upon each application the date and time of its receipt.
4. If the property is not served by a public sewer, a valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the Plumbing Inspector, shall be submitted whenever the nature of the proposed structure or use would require the installation of a subsurface sewage disposal system.

### **D. Procedure for Administering Permits**

Within 35 days of the date of receiving a written application, the Planning Board, Code Enforcement Officer, or Local Plumbing Inspector as indicated in Section 14, shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete. The Planning Board or the Code Enforcement Officer, as appropriate, shall approve, approve with conditions, or deny all permit applications in writing within 35 days of receiving a completed application. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within 35 days after the first available date on the Planning Board's agenda following receipt of the completed application, or within 35 days of the public hearing, if one is held. Permits shall be approved if the proposed use is found to be in conformance with the provisions of this ordinance.

The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance.

After the submission of a complete application to the Planning Board, the Board shall approve an application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use:

- 1.) Will maintain safe and healthful conditions;
- 2.) Will not result in water pollution, erosion, or sedimentation to surface waters;

- 3.) Will adequately provide for the disposal of all wastewater;
- 4.) Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
- 5.) Will conserve shore cover and visual, as well as actual, points of access to inland waters;
- 6.) Will protect archaeological and historic resources as designated in the comprehensive plan;
- 7.) Will avoid problems associated with flood plain development and use; and
- 8.) Is in conformance with the provisions of Section 15, Land Use Standards.

Permits may be made subject to reasonable conditions to insure conformity with the purposes and provisions of this Ordinance. If a permit is denied, or approved with conditions, the reasons for denial as well as the conditions shall be stated in writing. No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance or regulation or or statute administered by the municipality.

#### **E. Special Exceptions**

In addition to the criteria specified in Section 16(D) above, excepting structure setback requirements, the Planning Board may approve a permit for a single family residential structure in a Resource Protection District provided that the applicant demonstrates that all of the following conditions are met:

- (1) There is no location on the property, other than a location within the Resource Protection District, where the structure can be built.
- (2) The lot on which the structure is proposed is undeveloped and was established and recorded in the registry of deeds of the county in which the lot is located before the adoption of the Resource Protection District.
- (3) All proposed buildings, sewage disposal systems and other improvements are:
  - (a) Located on natural ground slopes of less than 20%; and
  - (b) Located outside the floodway of the 100-year flood-plain along rivers and artificially formed great ponds along rivers, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps; all buildings, including basements, are elevated at least one foot above the 100-year flood-plain elevation; and the development is otherwise in compliance with any applicable municipal flood-plain ordinance.

If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be 1/2 the width of the 100-year flood-plain.

- (4) The total ground-floor area, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance.



- (5) All structures, except functionally water-dependent structures, are set back from the normal high-water line of a water body, tributary stream or upland edge of a wetland to the greatest practical extent, but not less than 75 feet, horizontal distance. In determining the greatest practical extent, the Planning Board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the flood-plain, and its proximity to moderate-value and high-value wetlands.

#### **F. Expiration of Permit**

Permits shall expire one year from the date of issuance if a substantial start is not made in construction or in the use of the property during that period. If a substantial start is made within one year of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire.

#### **G. Installation of Public Utility Service**

No public utility, water district, sanitary district or any utility company of any kind may install services to any new structure located in the shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this or any previous Ordinance, has been issued by the appropriate municipal officials. Following installation of service, the company or district shall forward the written authorization to the municipal officials, indicating that installation has been completed.

#### **H. Appeals**

##### **1. Powers and Duties of the Board of Appeals**

The Board of Appeals shall have the following powers:

a.) Administrative Appeals: To hear and decide administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Planning Board in the administration of this Ordinance; and to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Code Enforcement Officer in his or her review of and action on a permit application under this Ordinance. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this ordinance is not appealable to the Board of Appeals.

b.) Variance Appeals: To authorize variances upon appeal, within the limitations set forth in this Ordinance.

##### **2. Variance Appeals**

Variances may be granted only under the following conditions:

a. Variances may be granted only from dimensional requirements including but not limited to, lot width, structure height, percent of lot coverage, and setback requirements.

b. Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.

c. The Board shall not grant a variance unless it finds that:

(1) The proposed structure or use would meet the provisions of Section 15 except for the specific provision which has created the non-conformity and from which relief is sought; and

(2) The strict application of the terms of this Ordinance would result in undue hardship. The term "undue hardship" shall mean:

(i) That the land in question cannot yield a reasonable return unless a variance is granted;

(ii) That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

(iii) That the granting of a variance will not alter the essential character of the locality; and

(iv) That the hardship is not the result of action taken by the applicant or a prior owner.

d. Notwithstanding Section 16(H)(2)(c)(ii) above, the Board of Appeals may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the dwelling" shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

e. The Board of Appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.

#### Administrative Appeals

When the Board of Appeals reviews a decision of the Code Enforcement Officer the Board of Appeals shall hold a "de novo" hearing. At this time the Board may receive and consider new evidence and testimony, be it oral or written. When acting in a "de novo" capacity the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

When the Board of Appeals hears a decision of the Planning Board, it shall hold an appellate hearing, and may reverse the decision of the Planning Board only upon finding that the decision was contrary to specific provisions of the Ordinance or contrary to the facts presented to the Planning Board. The Board of Appeals may only review the record of the proceedings before the Planning Board. The Board

Appeals shall not receive or consider any evidence which was not presented to the Planning Board, but the Board of Appeals may receive and consider written or oral arguments. If the Board of Appeals determines that the record of the Planning Board proceedings are inadequate, the Board of Appeals may remand the matter to the Planning Board for additional fact finding.

#### Appeal Procedure

##### a. Making an Appeal

(1) An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning Board, except for enforcement-related matters as described in Section 16(H)(1)(a) above. Such an appeal shall be taken within thirty (30) days of the date of the official, written decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement

Applications for appeal shall be made by filing with the Board of Appeals a written notice of appeal which includes:

- (i) A concise written statement indicating what relief is requested and why the appeal or variance should be granted.
- (ii) A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.

(3) Upon receiving an application for an administrative appeal or a variance, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.

(4) The Board of Appeals shall hold a public hearing on an administrative appeal or a request for a variance within thirty-five (35) days of its receipt of a complete written application, unless this time period is extended by the parties.

##### b. Decision by Board of Appeals

(1) A majority of the full voting membership of the Board shall constitute a quorum for the purpose of deciding an appeal.

(2) The person filing the appeal shall have the burden of proof.

(3) The Board shall decide all administrative appeals within thirty five (35) days after the close of the hearing, and shall issue a written decision on all appeals.

(4) The Board of Appeals shall state the reasons and basis for its decision, including a statement of the facts found and conclusions reached by the Board. The Board shall cause written notice of its decision to be mailed or hand-delivered to the applicant and to the Department of Environmental Protection within seven (7) days of the Board's decision. Copies of written decisions of the Board of Appeals shall be given to the Planning Board, Code Enforcement Officer, and the municipal officers.

5. Appeal to Superior Court

Except as provided by 30-A M.R.S.A. section 2691(3)(F), any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five (45) days from the date of any decision of the Board of Appeals.

6. Reconsideration

In accordance with 30-A M.R.S.A. section 2691(3)(F), the Board of Appeals may reconsider any decision within forty-five (45) days of its prior decision. A request to the Board to reconsider a decision must be filed within ten (10) days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within forty-five (45) days of the date of the vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the Board members originally voting on the decision, and proper notification to the landowner, petitioner, planning board, code enforcement officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.

Appeal of a reconsidered decision to Superior Court must be made within fifteen (15) days after the decision on reconsideration.

## H. Notification to Land Owners

In addition to the notice required by Title 30-A, Section 4352, subsection 9, written notification must be made to landowners whose property is being considered for placement in a resource protection zone. Notification to landowners must be made by First Class Mail to the last known addresses of the persons against whom property tax on each parcel is assessed. The municipal officers shall prepare and file with the municipal clerk a sworn, notarized certificate indicating those persons to whom notice was mailed and at what addresses, and when, by whom, and from what location notice was mailed. This certificate constitutes prima facie evidence that notice was sent to those persons named in the certificate. The municipality must send notice not less than 14 days before a public hearing on adoption or amendment of a zoning ordinance or map that places the landowner's property in the resource protection zone. Once a landowner's property is placed in a resource protection zone, individual notice is not required to be sent to the landowner when the zoning ordinance or map is later amended in a way that does not affect the inclusion of the landowner's property in the resource protection zone.

## I. Enforcement

1. Nuisances

Any violation of this Ordinance shall be deemed to be a nuisance.

### Code Enforcement Officer

It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he or she shall notify in writing the person responsible for such

violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal or discontinuance of the illegal use of land, buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record.

The Code Enforcement Officer shall conduct on-site inspections to insure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance.

The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. On an annual basis, a summary of this record shall be submitted to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection.

#### Legal Actions

When the above action does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the Town of Appleton. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.

#### 4. Fines

Any person, including but not limited to a landowner, a landowner's agent or a contractor, who violates any provision or requirement of this Ordinance shall be penalized in accordance with 30-A, M.R.S.A. section 4452.

NOTE: Current penalties include fines of not less than \$100 nor more than \$2500 per violation for each day that the violation continues. However, in a resource protection district the maximum penalty is increased to \$5000 (38 M.R.S.A. section 4452).

### Section 17. Definitions

**Accessory structure or use** - a use or structure which is incidental and subordinate to the principal use or structure. Accessory uses, when aggregated shall not subordinate the principal use of the lot. A deck or similar extension of the principal structure

or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure.

- Aggrieved party** - an owner of land whose property is directly or indirectly affected by the granting or denial of a permit or variance under this Ordinance; a person whose land abuts land for which a permit or variance has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or variance.
- Agriculture** - the production, keeping or maintenance for sale or lease, of plants and/or animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and green house products. Agriculture does not include forest management and timber harvesting activities.
- Aquaculture** - the growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.
- Boat Launching Facility** - a facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.
- Campground** - any area or tract of land to accommodate two (2) or more parties in temporary living quarters, including, but not limited to tents, recreational vehicles or other shelters.
- Canopy** - the more or less continuous cover formed by tree crowns in a wooded area.
- Commercial use** - the use of lands, buildings, or structures, other than a "home occupation," defined below, the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units.
- DBH** - the diameter of a standing tree measured 4.5 feet from ground level.
- Densely Developed Area** - any commercial, industrial or compact residential area of ten (10) or more acres with a density of at least one principal structure per 2 acres.
- Development** - a change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring.
- Dimensional requirements** - numerical standards relating to spatial relationships including but not limited to setback, lot area, shore frontage and height.
- Disability** - any disability, infirmity, malformation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness; and also includes the physical or mental condition of a person which constitutes a substantial handicap as determined by a physician or in the case of mental handicap, by a psychiatrist or psychologist, as well as any other health or sensory impairment which requires special education, vocational rehabilitation or related services.
- Driveway** - a vehicular access-way less than five hundred (500) feet in length serving two single-family dwellings or one two-family dwelling, or less.

**Emergency operations** - operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property and livestock from the threat of destruction or injury.

**Essential services** - the construction, alteration or maintenance of gas, electrical or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services.

**Expansion of a structure** - an increase in the floor area or volume of a structure, including all extensions such as, but not limited to attached: decks, garages, porches and greenhouses.

**Expansion of use** - the addition of weeks or months to a use's operating season; additional hours of operation; or the use of more floor area or ground area devoted to a particular use.

**Family** - one or more persons occupying a premises and living as a single housekeeping unit.

**Floodway** - the channel of a river or other water course and the adjacent land areas that must be reserved to allow for the discharge of a 100-year flood without cumulatively increasing the water surface elevation of the 100-year flood by more than one foot.

**Floor area** - the sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks.

**Forested wetland** - a freshwater wetland dominated by woody vegetation that is six (6) meters tall (approximately twenty (20) feet) or taller.

**Forest management activities** - timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation or maintenance of roads.

**Foundation** - the supporting substructure of a building or other structure, excluding wooden sills and post supports, but including basements, slabs, frostwalls, or other base consisting of concrete, block, brick or similar material.

**Freshwater wetland** - freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are:

1. of ten or more contiguous acres; or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook such that in a natural state, the combined surface area is in excess of 10 acres; and

inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

**Functionally water-dependent uses** - those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, inland waters and which cannot be located away from these waters. The uses include, but are not limited to commercial and recreational fishing and boating facilities, excluding recreational boat storage buildings, finfish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aides, basins and channels, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water and which cannot reasonably be located or operated at an inland site, and uses which primarily provide general public access to marine waters.

**Great pond** - any inland body of water which in a natural state has a surface area in excess of ten acres, and any inland body of water artificially formed or increased which has a surface area in excess of thirty (30) acres except for the purposes of this Ordinance, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner.

**Great pond classified GPA** - any great pond classified GPA, pursuant to 38 M.R.S.A. Article 4-A Section 465-A. This classification includes some, but not all impoundments of rivers that are defined as great ponds.

**Ground cover** – small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor.

**Height of a structure** - the vertical distance between the mean original (prior to construction) grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances that have no floor area.

**Home occupation** - an occupation or profession which is customarily conducted on or in a residential structure or property and which is 1) clearly incidental to and compatible with the residential use of the property and surrounding residential uses; and 2) which employs no more than two (2) persons other than family members residing in the home.

**Increase in nonconformity of a structure** - any change in a structure or property which causes further deviation from the dimensional standard(s) creating the nonconformity such as, but not limited to, reduction in water body, tributary stream or wetland setback distance, increase in lot coverage, or increase in height of a structure. Property changes or structure expansions which either meet the dimensional standard or which cause no further increase in the linear extent of nonconformance of the existing structure shall not be considered to increase nonconformity. For example, there is no increase in nonconformity with the setback requirement for water bodies, wetlands, or tributary streams if the expansion extends no further into the required setback area than does any portion



of the existing nonconforming structure. Hence, a structure may be expanded laterally provided that the expansion extends no closer to the water body, tributary stream, or wetland than the closest portion of the existing structure from that water body, tributary stream, or wetland. Included in this allowance are expansions which in-fill irregularly shaped structures.

**Individual private campsite** - an area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed ten (10) individuals and which involves site improvements which may include but not be limited to a gravel pad, parking areas, fire places, or tent platforms.

**Industrial** - The assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or the extraction of minerals.

**Institutional** – a non-profit or quasi-public use, or institution such as a church, library, public or private school, hospital, or municipally owned or operated building, structure or land used for public purposes.

**Land Management Road** - a route or track consisting of a bed of exposed mineral soil, gravel, or other surfacing materials constructed for, or created by, the passage of motorized vehicles and used primarily for timber harvesting and related activities, including associated log yards, but not including skid trails or skid roads.

**Licensed Forester** - a forester licensed under 32 M.R.S.A. Chapter 76.

**Lot area** - The area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and areas beneath roads serving more than two lots.

**Marina** - A business establishment having frontage on navigable water and, as its principal use, providing for hire offshore moorings or docking facilities for boats, and which may also provide accessory services such as boat and related sales, boat repair and construction, indoor and outdoor storage of boats and marine equipment, bait and tackle shops and marine fuel service facilities.

**Market value** - the estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

**Mineral exploration** - hand sampling, test boring, or other methods of determining the nature or extent of mineral resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition.

**Mineral extraction** - any operation within any twelve (12) month period which removes more than one hundred (100) cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and to transport the product removed, away from the extraction site.

**Minimum lot width** - the closest distance between the side lot lines of a lot. When only two lot lines extend into the shoreland zone, both lot lines shall be considered to be side lot lines.

**Multi-unit residential** - a residential structure containing three (3) or more residential dwelling units.

**Native** – indigenous to the local forests.

**Non-conforming condition** – non-conforming lot, structure or use which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendment took effect.

**Non-conforming lot** - a single lot of record which, at the effective date of adoption or amendment of this Ordinance, does not meet the area, frontage, or width requirements of the district in which it is located.

**Non-conforming structure** - a structure which does not meet any one or more of the following dimensional requirements; setback, height, or lot coverage, but which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

**Non-conforming use** - use of buildings, structures, premises, land or parts thereof which is not allowed in the district in which it is situated, but which is allowed to remain solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

**Normal high-water line** - that line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond.

**Person** - an individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having a joint or common interest, or other legal entity.

**Piers, docks, wharfs, bridges and other structures and uses extending over or beyond the normal high-water line or within a wetland-**

Temporary: Structures which remain in or over the water for less than seven (7) months in any period of twelve (12) consecutive months.

Permanent: Structures which remain in or over the water for seven (7) months or more in any period of twelve (12) consecutive months.

**Principal structure** - a building in which is conducted the primary or principal use of the lot on which it is located.

**Principal use** - the primary or predominant use of any lot.

**Public facility** - any facility, including, but not limited to, buildings, property, recreation areas, and roads, which are owned, leased, or otherwise operated, or funded by a governmental body or public entity.

**Recent flood plain soils** - the following soil series as described and identified by the National Cooperative Soil Survey:

Alluvial Cornish Charles  
Fryeburg Hadley Limerick  
Lovewell Medomak Ondawa  
Podunk Rumney Saco  
Suncook Sunday Winooski

**Recreational facility** - a place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, excluding boat launching facilities.

**Recreational vehicle** - a vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pick-up camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the unit must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles.

**Replacement system** - a system intended to replace: 1.) an existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure, or 2.) any existing overboard wastewater discharge.

**Residential dwelling unit** - a room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not residential dwelling units.

**Residual basal area** - the average of the basal area of trees remaining on a harvested site.

**Residual stand** - a stand of trees remaining in the forest following timber harvesting and related activities

**Riprap** - rocks, irregularly shaped, and at least six (6) inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two (2) units horizontal to one (1) unit vertical or less.

**River** - a free-flowing body of water including its associated flood plain wetlands from that point at which it provides drainage for a watershed of twenty five (25) square miles to its mouth.

**Road** - a route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles, excluding a driveway as defined.

**Service drop** - any utility line extension which does not cross or run beneath any portion of a water body provided that:

1. In the case of electric service:  
the placement of wires and/or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway right-of-way; and
- b. the total length of the extension is less than one thousand (1,000) feet.

2. In the case of telephone service:  
the extension, regardless of length, will be made by the installation of telephone wires to existing utility poles, or  
the extension requiring the installation of new utility poles or placement underground is less than one thousand (1,000) feet in length.

**Setback** - the nearest horizontal distance from the normal high-water line of a water body or tributary stream, or upland edge of a wetland, to the nearest part of a structure, road, parking space or other regulated object or area.

**Shore frontage** - the length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline at normal high-water elevation.

**Shoreland zone** - the land area located within two hundred and fifty (250) feet, horizontal distance, of the normal high-water line of any great pond or river; within 250 feet of the upland edge of a freshwater wetland; or within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream.

**Shoreline** – the normal high-water line, or upland edge of a freshwater or coastal wetland.

**Skid Road or Skid Trail** - a route repeatedly used by forwarding machinery or animal to haul or drag forest products from the stump to the yard or landing, the construction of which requires minimal excavation.

**Slash** - the residue, e.g., treetops and branches, left on the ground after a timber harvest.

**Stream** - a free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river.

**Structure** - anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences, and poles, wiring and other aerial equipment normally associated with service drops as well as guying and guy anchors. The term includes structures temporarily or permanently located, such as decks, patios, and satellite dishes.

**Substantial start** - completion of thirty (30) percent of a permitted structure or use measured as a percentage of estimated total cost.

**Subsurface sewage disposal system** - any system designed to dispose of waste or waste water on or beneath the surface of the earth; includes, but is not limited to: septic tanks; disposal fields; grandfathered cesspools; holding tanks; pretreatment filter, piping, or any other fixture, mechanism, or apparatus used for those purposes; does not include any discharge system licensed under 38 M.R.S.A. section 414, any surface waste water disposal system, or any municipal or quasi-municipal sewer or waste water treatment system.

**Sustained slope** - a change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.

**Timber harvesting** - the cutting and removal of timber for the primary purpose of selling or processing forest products. The cutting or removal of trees in the shoreland zone on a lot that has less than two (2) acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Section 15 (P), *Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting*.

**Tributary stream** - a channel between defined banks created by the action of surface water, whether intermittent or perennial, and which is characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of topsoil containing waterborne deposits on exposed soil, parent material or bedrock, and which flows to a water body or wetland as defined.

This definition does not include the term "stream" as defined elsewhere in this Ordinance, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland.

NOTE: Water setback requirements apply to tributary streams within the shoreland zone.

**Upland edge of a wetland** - the boundary between upland and wetland. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are six (6) meters (approximately twenty (20) foot) tall or taller.

**Vegetation** - all live trees, shrubs, and other plants including without limitation, trees both over and under 4 inches in diameter, measured at 4 1/2 feet above ground level.

**Volume of a structure** - the volume of all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof.

**Water body** - any great pond, river or stream.

**Water Crossing** - any project extending from one bank to the opposite bank of a river, stream, tributary stream, or wetland whether under, through, or over the water or wetland. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings. This definition includes crossings for timber harvesting equipment and related activities.

**Wetland** - A freshwater wetland; see freshwater wetland.

**Woody vegetation** - live trees or woody, non-herbaceous shrubs.

**Section 18. Certification of Adoption**

I hereby attest that this is a true copy of the Shoreland Zoning Ordinance for the Town of Appleton, Maine duly adopted on March 23, 1991.

S/Valerie Leland  
Appleton Town Clerk

\_\_\_\_\_  
Appleton Town Seal

April 02, 1991  
Date

Adopted March 23, 1991

- Annual Town Meeting - 03/19/94 – Article #23 - Amended - Section 9
- Annual Town Meeting – 06/18/97 – Article #26 - Amended – Table 1 (15,a.)  
& Abbreviations for Table 1 (Added #8)
- Annual Town Meeting – 06/19/99 – Article #29 - Amended – Table 1 (15,c., 18, 19, 20)
- Annual Town Meeting – 06/17/00 – Article #31 – Amended – Section 16 (Added (H))
- Special Town Meeting – 07/26/00 – Articles #4 & #5 – Amended – Official Shoreland Zoning Map
- Annual Town Meeting – 06/16/01 – Article s #33 & #34 – Amended – Official Shoreland Zoning Map
- Annual Town Meeting – 06/16/01 – Articles #36 & #37 - Amended – Section 15  
(Replace (O)(1)) – Section 14 (Note 1) – Section 16 (Add (H))
- Annul Town Meeting – 06/18/05 – Articles # 3 – Amended – Sections 15, 16, & 17  
Article #4 – Adopted “Appleton Map 6B Shoreland Zoning 2005”  
Article #5 – Amended – Section 17
- Annual Town Meeting – 06/17/06 – Article #32 – Amended – Section 15 & 17
- Annual Town Meeting – 06/10/09 – Article #27 – Revised Entire Ordinance  
Article # 28- Revised “Appleton Shoreland Zoning Map” June 2009.
- Annual Town Meeting – 6/09/2010 - Article # 30 – Amendments as written.
- Annual Town Meeting – 06/13/2012 – Article #30 – Amendments as written

A True Attest Copy:

Pamela J. Tibert  
June 13, 2012

**Site Plan Review Ordinance  
for Commercial Development in the  
Town of Appleton, Maine**

<b>SECTION 1.</b>	<b>Title</b>
<b>SECTION 2.</b>	<b>Purpose</b>
<b>SECTION 3.</b>	<b>Applicability</b>
<b>SECTION 4.</b>	<b>Performance Standards</b>
<b>SECTION 5.</b>	<b>Authority, Administration</b>
<b>SECTION 6.</b>	<b>Site Plan Content and Application Procedures</b>
<b>SECTION 7.</b>	<b>General Provisions</b>
<b>SECTION 8.</b>	<b>Performance Guarantees</b>
<b>SECTION 9.</b>	<b>Violation, Enforcement and Fines</b>
<b>SECTION 10.</b>	<b>Validity and Separability</b>
<b>SECTION 11.</b>	<b>Conflict with Other Ordinances</b>
<b>SECTION 12.</b>	<b>Appeals</b>
<b>SECTION 13.</b>	<b>Amendments</b>
<b>SECTION 14.</b>	<b>Definitions</b>
<b>SECTION 15.</b>	<b>Effective Date</b>
<b>SECTION 16.</b>	<b>Certificate of Adoption</b>

**SECTION 1. Title**

This ordinance shall be known as and may be cited as the Site Plan Review Ordinance for the Town of Appleton, Maine and will be referenced to herein as the “Ordinance.”

**SECTION 2. Purpose**

Substantial development or major changes in the use of land can cause a profound impact upon the cost and efficiency of municipal services and upon the environment of the Town. Such development can affect schools, sewers, waterlines and other public utilities; recreational facilities; liquid and solid waste disposal, police and fire protection, open space, road systems and circulation, traffic congestion; placement of building(s) and structure(s), property values; water quality; the aesthetic and visual characteristics of the neighborhood and Town, the general health, safety, and welfare of Appleton. It is the purpose of this Ordinance to avoid such negative effects when caused by development(s) including commercial, retail, industrial, institutional building(s) and structure(s) and multiple family dwelling(s) consisting of three (3) or more attached dwelling units.

**SECTION 3. Applicability**

This ordinance shall apply to all new commercial, retail, industrial, or institutional developments in the Town of Appleton including:

- buildings and structures
- alterations or substantial enlargements to such structures

- change of use of an existing building or structure from residential to non-residential
- change of use from one category of nonresidential use to another category of nonresidential use
- new nonresidential uses even if no buildings or structures are proposed (e.g. – cemeteries, golf courses, and other nonstructural nonresidential uses)
- new nonresidential uses using existing buildings or structures
- accessory uses and structures of these developments or businesses
- multiple family dwellings consisting of three or more attached dwelling units

This ordinance does not apply to home occupations (as defined herein), detached single and two-family dwelling units, their accessory structures, agricultural land management practices, or forest management practices.

#### **SECTION 4. Performance Standards**

In approving a Site Plan for Development Application (SPDA) the Planning Board shall first determine that the requirements for site plan content and application procedures have been met. Following such determination, the Board shall proceed to find that the proposed plan adequately meets the following standards, where applicable to the proposed development. These standards shall serve as minimum requirements for approval of the SPDA. The SPDA shall be approved, unless in the judgment of the Planning Board the applicant is not able to reasonably meet one (1) or more of these standards. All decisions of the Planning Board under this section shall be accompanied by written statements that set forth the precise reasons why the findings were made. In all instances the burden of proof shall be on the applicant and such burden of proof shall include the production of evidence necessary to complete the application. These standards shall include:

- 1. Preservation and Enhancement of The Landscape:** The landscape shall be preserved in its natural state insofar as practicable by minimizing tree removal, disturbance of soil, retaining existing vegetation during construction. After construction is completed, landscaping shall be designed and planted that will define, soften or screen the appearance of off-street parking areas from the public right-of-way and abutting properties and/or structures in order to enhance the physical design of the building(s) or site, and to minimize the encroachment of the proposed use on neighboring land uses.
- 2. Relationship of the Proposed Buildings to the Environment:** Proposed structures shall be related harmoniously to the terrain and to existing buildings in the vicinity which have visual relationship to the proposed buildings. Special attention shall be paid to the bulk, location and height of the building(s) and such natural features as slope, soil type and drainage ways.
- 3. Vehicular Access:** The proposed site layout shall provide for safe access and egress from public and private roads by providing adequate location, numbers and control of



access points including sight distances, turning lanes, and traffic signalization when required by existing and projected traffic flow on the municipal road systems. Provisions shall be made for providing and maintaining convenient and safe emergency vehicle access to all buildings and structures at all times.

4. **Parking and Circulation:** The layout and design of all means of vehicular and pedestrian circulation, including walkways, interior drives, and parking areas shall provide for safe general interior circulation, separation of pedestrian and vehicular traffic, service traffic, loading areas, and arrangement and use of parking areas.

5. **Surface Water Drainage:** Adequate provision shall be made for surface water drainage so that removal of surface waters will not adversely affect neighboring properties, downstream water quality, soil erosion or the public storm drainage system. Whenever possible, on-site absorption of run-off waters shall be utilized to minimize discharges from site.

6. **Existing Utilities:** The development shall not impose an unreasonable burden on sewers, sanitary and storm drains, water lines or other public utilities.

7. **Advertising Features:** The size, location, design, lighting and materials of all exterior signs and outdoor advertising structures or features shall not detract from the design of structures and surrounding properties.

8. **Special Features of the Development:** Exposed storage areas, exposed machinery installation, service areas, truck loading areas, utility buildings and similar structures shall have sufficient setbacks and screening to provide an audio/visual buffer sufficient to minimize their adverse impact on other land uses within the development area and surrounding properties.

9. **Exterior Lighting:** All exterior lighting shall be designed to minimize adverse impact on neighboring properties.

10. **Municipal Services:** The development will not have an unreasonable adverse impact on the municipal services including municipal road systems, fire department, police department, solid waste program, sewage treatment plant, schools, open space, recreational programs and facilities, and other municipal services and facilities.

11. **Water Pollution:** The proposed development will not result in undue water pollution. In making this determination the Planning Board shall at least consider the elevation of land above sea level and its relation to the flood plains, the nature of soils and sub-soils and, if necessary, their ability to adequately support waste disposal and/or any other D.E.P. approved licensed discharge; the slope of the land and its effect on effluents; the aquifers and aquifer recharged areas; the availability of streams for disposal of surface run-off; the applicable federal, state, and local laws, ordinances, codes and regulations.

12. **Air Pollution:** The proposed development will not result in undue air pollution. In

making this determination the Planning Board shall consult federal and state authorities to determine applicable air quality laws and regulations.

13. **Water Supply:** The proposed development shall have sufficient water available for the reasonably foreseeable needs, and will not cause an unreasonable burden on an existing water supply, if one is to be utilized.

14. **Soil Erosion:** The proposed development will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

15. **Sewage:** The proposed development will provide for adequate sewage waste disposal as required by state laws.

16. **Historic and Scenic Areas:** The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas.

17. **Shoreline:** Whenever situated in whole or in part, within 250 feet of any pond, lake, or river, the proposed development will not adversely affect the shoreline of such body of water.

## **SECTION 5. Authority, Administration, and Conflict of Interest**

### **A. Authority:**

This Ordinance is adopted pursuant to the Home Rule Powers as provided for in Article VIIIA of the Maine Constitution and Title 30-A M.R.S.A. Section 3001.

### **B. Administration:**

1. The Planning Board of the Town of Appleton shall administer this Ordinance.
2. No building permit or plumbing permit or certificate of occupancy shall be issued by the Selectmen or Code Enforcement Officer or plumbing inspector for any use or development within the scope of this Ordinance until a Site Plan for Development Application has been reviewed and approved by the Planning Board.
3. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member of either the Planning Board or Board of Appeals from voting thereon, shall be decided by a majority vote of the respective Boards, except the member whose potential conflict is under consideration.

## **SECTION 6. Site Plan Content and Application Procedures**

- A. The Site Plan for Development Application shall include, at a minimum:

1. A map or maps prepared at a scale of not less than one (1) inch to 50 feet and shall include:
  - a. Name and address of the applicant or his/her authorized agent, name of proposed development land within 500 feet of the proposed development in which the applicant has right, title or interest, scale, north point;
  - b. Existing soil conditions on the site as described by either a soil scientist, geologist, engineer, or Soil Conservation Service medium intensity soil survey;
  - c. Municipal tax maps, lot numbers, and names of abutting landowners;
  - d. Perimeter survey of the parcel, certified by a registered land surveyor relating to reference points. Showing true north point, graphic scale, corners of parcel, date of survey, and total acreage. Areas within 500 feet of the proposed development site shall be included;
  - e. Existing structures, proposed development, and dimensions of: utility lines, sewer lines, water lines, easements, drainage ways, and public or private rights-of-way;
  - f. Location, ground floor area, elevations of buildings and other structures on parcels abutting the site;
  - g. If the site is not to be served by a public sewer line, then an on-site soils investigation report by a Department of Human Services licensed site-evaluator shall be provided. The report shall contain the types of soil, location of test pits, wells, steep slopes, proposed disposal location, design of the best practical subsurface disposal system and other pertinent existing physical features;
  - h. Location and dimensions of on-site pedestrian and vehicular access ways, parking areas, loading and unloading facilities, design of ingress and egress of vehicles to and from the site on to public streets, and curb and sidewalk lines;
  - i. Landscaping plan showing location, type, approximate size of plantings, location and dimensions of all fencing and screening;
  - j. Topography indicating contours at intervals of either 5, 10 or 20 feet in elevation as specified by the Planning Board;
  - k. Location of aquifers and aquifer recharge areas (if mapped); and
  - l. Location of watercourses, marshes, rock outcroppings, wooded areas, and single trees with a diameter of 10 inches measured three feet from the base of the trunk.

2. A written statement by the applicant that shall consist of:
  - a. Evidence by the applicant of his/her title and interest in the land proposed for development;
  - b. A description of the proposed use(s) to be located on the site, including quantity
  - c. Total floor area of each proposed building or structure and percentage of lot covered by the total development;
  - d. Existing easements, restrictions, covenants or other restrictions placed on the property, adjacent property, or intersecting the property;
  - e. Method of solid waste disposal with letter from authorities stating approval of the disposal;
  - f. Erosion and sedimentation control plan;
  - g. Copies of letters sent to: the abutting landowners, selectmen, road commissioner/public works director, fire chief, police chief, etc., notifying them of the proposed development;
  - h. Statement of financial capacity, including names and sources of the financing parties

including banks, whether these sources of financing are for construction loans or longterm mortgages or both; including: governmental agencies, private corporation, partnerships and limited partnerships;

- i. List of applicable local, state, and federal ordinances, statutes, laws, codes and regulations such as, but not limited to, zoning ordinances, Great Ponds Act, the flood prone areas subject to the National Flood Insurance Act, etc.;
- j. In cases where off-site facilities are proposed for primary or secondary use applicants shall provide a statement of evaluation of the availability and suitability of off-site public facilities including sewer, water, and streets;
- k. A statement from the Fire Chief as to the availability of the fire protection services, including; fire hydrants and/or fire ponds;
  1. If public water and/or sewer are to be used, a statement from the water and/or sewer district, or utility, as to the availability of public water and/or sewer lines;
- m. A statement from the Town Engineer, Public Works Director, Road Commissioner and Board of Selectmen that the proposed road or street construction will meet Town specifications and;
- n. A proposed start-up date and completion date, specifying start-up and completion phase dates, if applicable.

#### B. Traffic Data:

A plan may be required to have an accompanying traffic engineering study should the project propose a total building coverage in excess of 5,000 square feet (ground floor area) or an area in excess of 30,000 square feet which is to be roofed, paved, or stripped of vegetation. Should a traffic study be requested by the Planning Board, the following data shall be included:

1. The estimated peak-hour traffic to be generated by the proposal.
2. Existing traffic counts and volumes on surrounding roads.
3. The capacity of surrounding roads and any improvements which may be necessary on such roads to accommodate anticipated traffic generation.
4. The need for traffic signals and signs or other directional markers to regulate anticipated traffic.

#### C. Application Procedures:

1. The application shall be filed with the Planning Board for review and accompanied by a fee of \$1.00 for every \$1,000 of proposed construction money. In addition, the Planning Board may set an amount to be added to the base fee paid by the developer, sufficient to enable the Board to secure outside technical assistance in reviewing the proposed development, if, in the Board's sole discretion, such assistance will be required. Within 30 days of the filing of an application, the Planning Board shall notify the applicant in writing either that the application is a complete application or, if the application is incomplete, the specific additional material needed to make a complete application. After the Planning Board has determined that a complete application has been filed, it shall notify the applicant in writing and begin its review of the proposed development.
2. The Planning Board may hold a public hearing within thirty (30) days of the filing of the completed application. The Planning Board shall publish the time, date and place of the hearing at least two times, the date of the first publication to be at least seven days

prior to the hearing in a newspaper of area wide circulation. The abutting landowners shall be 10 notified of the hearing. Public hearings conducted by the Planning Board shall be in accordance with the procedures outlined in title 30-A M.R.S.A., Section 2691(3).

3. Within thirty (30) days of the public hearing or sixty (60) days of receiving the application the Planning Board shall make their decision to either approve, approve with conditions, or disapprove the application. The time limit for review may be extended by a written mutual agreement between the Planning Board and the applicant.

4. Within seven (7) days of reaching their decision, the Planning Board shall determine findings of fact and notify the applicant in writing of any action taken and the reason for taking such action.

## **SECTION 7. General Provisions**

A. The Planning Board may modify or waive any of the above application requirements or performance standards when the Planning Board determines that because of the special circumstances of the site such application requirements or standards would not be applicable or would be an unnecessary burden upon the applicant and not adversely affect the abutting land owners and the general health, safety and welfare of the Town.

B. All construction performed under the authorization of a building permit or certificate of occupancy issued for development within the scope of this Ordinance shall be in conformance with the approved site plan.

## **SECTION 8. Performance Guarantees**

A. At the time of approval of the application for Site Plan Review, the Planning Board shall require the applicant to tender a performance guarantee in the form of a certified check payable to the Town, a letter of credit payable to the Town or a performance bond payable to the Town issued by a financial institution or surety company acceptable to the Planning Board in an amount adequate to cover the total costs of all **required improvements**, taking into account the time-span of the performance guarantee and the effects of inflation upon costs. Required improvements may include but shall not be limited to monuments, street signs, streets, sidewalks, parking lots, water supply, sewage disposal and storm drainage facilities and required landscaping. The conditions and the amount of the certified check, letter of credit or bond shall be determined by the Planning Board with Advice from the Code Enforcement Officer.

B. Prior to the release of the check, letter of credit, or bond, or any part thereof, the Planning Board shall determine to its satisfaction that the proposed improvements meet or exceed the design and construction requirements for that portion of the improvements for which the release is requested. Any interest accumulated on an escrow account shall be returned to the applicant after it has been determined that the proposed improvements meet all design and construction requirements.

C. If the Planning Board determines that any of the improvements have not been constructed in accordance with the plans and specifications filed by the applicant, the

Planning Board shall then notify the applicant, and take all necessary steps to preserve the Town's rights.

D. The applicant shall notify the Code Enforcement Officer in writing of the time when he proposes to commence construction of the improvements, so that the Code Enforcement Officer can ensure that all municipal specifications and requirements are met during the construction of required improvements, and to assure the satisfactory completion of improvements and utilities required by the Board.

## **SECTION 9. Violation, Enforcement and Fines**

**A. Violation and Enforcement:** The Planning Board, the Selectmen, or the appropriate municipal office, upon a finding that any provision of this Ordinance or the condition(s) of a 5 permit issued under this ordinance is being violated, are authorized to institute legal or equitable proceedings to enjoin violations of this Ordinance.

**B. Fines:** As provided by State Law a person who violates the provisions of this Ordinance or condition(s) of a permit shall be guilty of a civil violation and on conviction shall be fined not less than One Hundred Dollars (\$100.00) nor more than Two Thousand Five Hundred (\$2,500.00). Each day such violation continues, shall constitute a separate violation. Such persons shall also be liable for court costs and reasonable attorney fees incurred by the municipality.

## **SECTION 10. Validity and Separability**

Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

## **SECTION 11. Conflict with Other Ordinances**

Whenever the requirements of this Ordinance are inconsistent with the requirements of any other ordinance, code, or statute, the more restrictive requirements will apply.

## **SECTION 12. Appeals**

If the Planning Board disapproves an application or grants approval with conditions that are objectionable to the applicant or any abutting land owner or aggrieved party, or when it is claimed that the provisions of this Ordinance do not apply, or that the true intent and meaning of this Ordinance has been misconstrued or wrongfully interpreted, the applicant, an abutting land owner, or aggrieved party may appeal the decision of the Planning Board in writing to the Board of Appeals within thirty (30) days of the Planning Board's decision. The Board of Appeals may reverse the Planning Board's decision after holding a public hearing and may grant a variance as defined herein. Public Hearings shall be held in accordance with title 30-A M.R.S.A., Section 2691.

## **SECTION 13. Amendments**

This Ordinance may be amended by a majority vote at a regular or special town meeting. Amendments may be initiated by a majority vote of the Planning Board or by request of the Board of Selectmen to the Planning Board or by petition directed to the Selectmen containing a number of signatures at least equal to 10% of the votes cast in the last gubernatorial election in the town. The Planning Board shall conduct a public hearing on any proposed amendment at least fourteen (14) days in advance of the town meeting.

#### **SECTION 14. Definitions**

Terms not defined shall have the customary dictionary meaning. When used in this Ordinance, the following terms shall have the meanings herein ascribed to them:

**Aggrieved Party** - A person whose land is directly or indirectly affected by the grant or denial of a permit or variance under this Ordinance, a person whose land abuts land for which a permit or variance has been granted, or a group of five (5) or more citizens of the Town of Appleton who represent an interest adverse to the grant or denial of such a permit or variance.

**Agricultural Development** - The construction or conversion of structures or buildings or the conversion of land for the commercial cultivation, production, or processing of agricultural products.

**Agricultural Land Management Practices** - Those devices and procedures utilized in the cultivation of land in order to further crop and livestock production and conservation of related soil water resources.

**Alteration** - Structural change(s), rearrangement, change of location, or addition to a building, or structure other than repairs and modification in building equipment, involving more than 25% increase in the overall floor space or bulk of the building, or structure, at any time or in total, since the effective date of this Ordinance.

**Building** - Any structure having a roof or partial roof supported by columns or walls used for the shelter or enclosure of persons, animals, goods or property of any kind. A building shall include a multiple family dwelling.

**Change from one category of nonresidential use to another category of nonresidential use:** A change in the type of occupancy of a nonresidential building or structure, or a portion thereof, such that the basic type of use is changed, such as from retail to office or storage to a restaurant, but not including a change in the occupants.

**Commercial** - Connected with the buying and selling of goods or services or the provisions of facilities for a fee.

**Dwelling Unit** - A room or group of rooms designed and equipped exclusively for use as living quarters for one family including provisions for living, cooking and eating.

**Family** - An individual living upon the premises as a separate housekeeping unit; or a collective body of persons living together upon the premises as a single housekeeping unit.

**Forest Management Practices** - Includes timber cruising and other forest resource evaluation activities, pesticide application, timber stand improvement, pruning, and other forest harvesting, regeneration of forest stands, and other similar associated activities, but not the construction, creation, or maintenance of land management roads.

**Home Occupation** – an occupation or profession which is customarily conducted on or in a residential structure or property, and meets the following requirements:

- is clearly incidental to and compatible with the residential use of the property and surrounding residential uses
- at least one member of the residential household must own the business, be actively involved in the business, and have control over the business activities
- employs no more than two full-time or part-time persons working on the premises other than family members residing in the home
- does not display sign(s) with a total area of more than 16 square feet

**Industrial** - Connected with the assembling, fabrication, finishing, manufacturing, packaging or processing of goods or the extraction of minerals.

**Institutional** - A building devoted to a public, governmental, educational, charitable, medical or similar purpose.

**Lot** - A parcel of land undivided by any street or private road, in single ownership, described by deed, plot, or similar legal document. Occupied by, or designated to be developed for, one (1) building or principle use and the accessory building(s) or use(s) customarily incidental to such building, use or development, including such open spaces and yards as designed and arranged or required by this Ordinance for such building(s), use(s), or development.

**Multiple Family Dwelling** - A building(s) consisting of three (3) or more attached dwelling units.

**Person(s)** - Any person, firm, association, partnership, corporation, municipal or other local government entity, quasi-municipal entity, State agency, educational or charitable organization or institution or other legal entity.

**Principle Building or Use** - See Building, Principal.

**Recreational Vehicle** - A Vehicle or vehicular attachment for temporary sleeping or living quarters for one or more persons, which is not a dwelling unit and which may include a pick-up, camper, travel trailer, tent trailer, or motor home.

**Retail** - Connected with the sale of goods to the ultimate consumer for direct use and



consumption.

**Stand** - A small open-air structure for a small retail business.

**Structure** - Anything constructed, erected, or placed, except a boundary wall or fence, the use of which requires location on the ground or attachment to something on the ground including, but not limited to buildings, recreational vehicles, piers and floats.

**Accessory Use or Structure** - A subordinate use of a building, other structure, or land, or a subordinate building or other structure:

1. Whose use is customary in connection with the principal structure, or use of land;
2. Whose use is clearly incidental to the use of the principal structure, or use of land, and
3. Which is located on the same lot with the principal structure, accessory structure, or use of land, or on a lot adjacent to such lot if in the same ownership or part of the same establishment.

**Substantial Enlargement** - An expansion of the land area of the development site by more than 25 % at any one time or in total since the effective date of this ordinance.

**Timber Harvesting** - The cutting or removal of trees from their growing site, and the attendant operation of cutting and skidding machinery but not the construction or creation of roads. Timber harvesting does not include the clearing of land for approved construction.

**Variance** - A relaxation of the terms of this Ordinance where such variance would not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of this Ordinance would result in unnecessary or undue hardship. A financial hardship shall not constitute grounds for granting a variance. The crucial points of variance are undue hardship (as defined in Title 30-A M.R.S.A. Section 4353 (4) and unique circumstances applying to the property. A variance is not justified unless both elements are present in the case.

## **SECTION 15. Effective Date**

The effective date of this ordinance or any amendments thereto shall be the day immediately following its/their adoption at a regular or special town meeting. The effective date of this Ordinance is November 5, 1986. A copy of this Ordinance and any amendments hereto shall be filed with the Town Clerk, according to the requirements of State law, and shall be accessible to any member of the public. The adoption of this Ordinance hereby repeals and supersedes all conflicting provisions of all ordinances adopted prior to the effective date of this Ordinance.

## **SECTION 16. Certificate of Adoption**

I hereby attest that this is a true copy of the Site Plan Review Ordinance for Commercial

Development for the town of Appleton, Maine, duly adopted on November 04, 1986.

\_\_\_\_\_  
Appleton Town Seal

\_\_\_\_\_  
Appleton Town Clerk

\_\_\_\_\_  
Date

A True Attest Copy:  
Pamela J. Smith

Amended – 06/18/2005 – Annual Town Meeting – Article #6

Amended – 06/13/2012 – Annual Town Meeting – Article #32

Amended – 06/12/2013 – Annual Town Meeting – Article #31, Article #32, Article #33

Amended - 06/15/2016 - Annual Town Meeting - Article #30

**TOWN OF APPLETON, MAINE**

**WIRELESS TELECOMMUNICATIONS**

**FACILITY SITING ORDINANCE**

**June 11, 2002**  
**Adopted by the Town of Appleton**

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# **WIRELESS TELECOMMUNICATIONS FACILITIES SITING ORDINANCE**

## **Section 1. Title**

This Ordinance shall be known and cited as the "Wireless Telecommunications Facilities Siting Ordinance" of Appleton, Maine, (hereinafter referred to as the "ordinance").

## **Section 2. Authority**

This ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section 1 of the Maine Constitution; the provisions of Title 30-A M.R.S.A. Section 3001 (Home Rule), and the provisions of the Planning and Land Use Regulation Act, Title 30-A M.R.S.A. Section 4312 et seq.

## **Section 3. Purpose**

The purpose of this ordinance is to provide a process and a set of standards for the construction of wireless telecommunications facilities in order to: Implement a municipal policy concerning the provision of wireless telecommunications services, and the siting of their facilities;

Establish clear guidelines, standards and time frames for the exercise of municipal authority to regulate wireless telecommunications facilities;

Encourage competition in telecommunications service;

Encourage the provision of advanced telecommunications services to the largest number of businesses, institutions and residents of Appleton;

Permit and manage reasonable access to the public rights of way of Appleton for telecommunications purposes on a competitively neutral basis;

Ensure that all telecommunications carriers providing facilities or services within Appleton comply with the ordinances of Appleton;

Ensure that Appleton can continue to fairly and responsibly protect the public health, safety and welfare;

Encourage the colocation of wireless telecommunications facilities, thus helping to minimize adverse visual impacts on the community;

Enable Appleton to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development;

Further the goals and policies of the comprehensive plan, while promoting orderly development of the town with minimal impacts on existing uses; and

Protect the scenic and visual character of the community.

## **Section 4. Applicability**

This local land use ordinance applies to all construction and expansion of wireless telecommunications facilities, except as provided in section 4.1.

#### **4.1. Exemptions**

The following are exempt from the provisions of this ordinance:

- A. Emergency Wireless Telecommunications Facility. Temporary wireless communication facilities for emergency communications by public officials.
- B. Amateur (ham) radio stations. Amateur (ham) radio stations licensed by the Federal Communications Commission (FCC).
- C. Parabolic antenna. Parabolic Antennas less than fourteen (14) feet in diameter, that are an accessory use of the property.
- D. Maintenance or repair. Maintenance, repair or reconstruction of a wireless telecommunications facility and related equipment, provided that there is no change in the height or any other dimension of the facility.
- E. Temporary wireless telecommunications facility. Temporary wireless telecommunications facility, in operation for a maximum period of one hundred eighty (180) days.
- F. Antennas as Accessory Uses. An antenna that is an accessory use to a residential dwelling unit.

### **Section 5. Review and Approval Authority**

#### **5.1. Approval Required**

No person or corporation shall construct or expand a wireless telecommunication facility without approval from the Planning Board as follows:

- A. Expansion of an Existing Facility and Colocation. Approval by the Planning Board is required for any expansion of an existing wireless telecommunications facility that increases the height of the facility by no more than 20 feet; accessory use of an existing wireless telecommunications facility; or colocation on an existing wireless telecommunications facility.
- B. New Construction. Approval of the Planning Board is required for construction of a new wireless telecommunications facility; and any expansion of an existing wireless telecommunications facility that increases the height of the facility by more than 20 feet.

#### **5.2 Approval Authority**

In accordance with Section 5.1 above, the Planning Board shall review applications for wireless telecommunications facilities, and make written findings on whether the proposed facility complies with this Ordinance.

### **Section 6. Approval Process**

#### **6.1. Pre-Application Conference**

All persons seeking approval of the Planning Board under this ordinance shall meet with the Planning Board no less than thirty (30) days before filing an application. At this meeting, the Planning Board shall explain to the applicant the ordinance provisions, as well as application forms and submissions that will be required under this ordinance.

#### **6.2. Application**

All persons or corporation seeking approval of the Planning Board under this ordinance shall submit an application as provided below. The Planning Board shall be responsible for ensuring that the applicant has posted notice of the application and has been published in a newspaper of general circulation in the community.

An application for approval must be submitted to the Planning Board. The application must include the following materials and information:

1. Documentation of the applicant's right, title, or interest in the property where the facility is to be sited, including name and address of the property owner and the applicant.
2. A copy of the FCC license for the facility or a signed statement from the owner or operator of the facility attesting that the facility complies with current FCC regulations.
3. Identification of: sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800).
4. Location map and elevation drawings of the proposed facility and any other proposed structures, showing color, and identifying structural materials.
5. For proposed expansion of a facility, a signed statement that commits the owner of the facility, and his or her successors in interest, to:
  - a. respond in a timely, comprehensive manner to a request for information from a potential colocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
  - b. negotiate in good faith for shared use by third parties;
  - c. allow shared use if an applicant agrees in writing to pay reasonable charges for colocation;
  - d. require no more than a reasonable charge for shared use, based on community rates and generally accepted accounting principles. This charge may include but is not limited to a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction and maintenance, financing, return on equity, depreciation, and all of the costs of adopting the tower or equipment to accommodate a shared user without causing electromagnetic interference.
6. A USGS 7.5 minute topographic map showing the location of all structures and wireless telecommunications facilities above 150 feet in height above ground level, except antennas located on roof tops, within a five (5) mile radius of the proposed facility, unless this information has been previously made available to the municipality. This requirement may be met by submitting current information (within thirty days of the date the application is filed) from the FCC Tower Registration Database.
7. A site plan:
  - a. prepared and certified by a professional engineer registered in Maine indicating the location, type, and height of the proposed facility, antenna capacity, on-site and abutting off-site land uses, means of access, setbacks from property lines, and all applicable American National Standards Institute (ANSI) technical and structural codes;
  - b. certification by the applicant that the proposed facility complies with all FCC standards for radio emissions is required; and
  - c. a boundary survey for the project performed by a land surveyor licensed by the State of Maine.
8. A scenic assessment, consisting of the following:
  - a. Elevation drawings of the proposed facility, and any other proposed structures, showing height above ground level;
  - b. A landscaping plan indicating the proposed placement of the facility on the site; location of existing structures, trees, and other significant site features; the type and location of plants proposed to screen the facility; the method of fencing, the color of the structure, and the proposed lighting method.

c. Photo simulations of the proposed facility taken from perspectives determined by the Planning Board, or their designee, during the pre-application conference. Each photo must be labeled with the line of sight, elevation, and with the date taken imprinted on the photograph. The photos must show the color of the facility and method of screening.

d. A narrative discussing:

- i. the extent to which the proposed facility would be visible from or within a designated scenic resource,
- ii. the tree line elevation of vegetation within 100 feet of the facility, and
- iii. the distance to the proposed facility from the designated scenic resource's noted viewpoints.

9. A written description of how the proposed facility fits into the applicant's telecommunications network. This submission requirement does not require disclosure of confidential business information.

10. Evidence demonstrating that no existing building, site, or structure can accommodate the applicant's proposed facility, the evidence for which may consist of any one or more of the following:

a. Evidence that no existing facilities are located within the targeted market coverage area as required to meet the applicant's engineering requirements,

b. Evidence that existing facilities do not have sufficient height or cannot be increased in height at a reasonable cost to meet the applicant's engineering requirements,

c. Evidence that existing facilities do not have sufficient structural strength to support applicant's proposed antenna and related equipment. Specifically:

i. Planned, necessary equipment would exceed the structural capacity of the existing facility, considering the existing and planned use of those facilities, and these existing facilities cannot be reinforced to accommodate the new equipment.

ii. The applicant's proposed antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna or equipment on the existing facility would cause interference with the applicant's proposed antenna.

iii. Existing or approved facilities do not have space on which planned equipment can be placed so it can function effectively.

d. For facilities existing prior to the effective date of this ordinance, the fees, costs, or contractual provisions required by the owner in order to share or adapt an existing facility are unreasonable. Costs exceeding the pro rata share of a new facility development are presumed to be unreasonable. This evidence shall also be satisfactory for a tower built after the passage of this ordinance;

e. Evidence that the applicant has made diligent good faith efforts to negotiate collocation on an existing facility, building, or structure, and has been denied access;

11. Identification of districts, sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800).

12. A signed statement stating that the owner of the wireless telecommunications facility and his or her successors and assigns agree to:

a. respond in a timely, comprehensive manner to a request for information from a potential collocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;

b. negotiate in good faith for shared use of the wireless telecommunications facility by third parties;

c. allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for collocation;



d. require no more than a reasonable charge for shared use, based on community rates and generally accepted accounting principles. This charge may include but is not limited to a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the useful life span of the facility.

13. A form of surety approved by the Planning Board to pay for the costs of removing the facility if it is abandoned.

14. Evidence that a notice of the application has been published in a local newspaper of general circulation in the community.

### **6.3. Submission Waiver**

The Planning Board may waive any of the submission requirements based upon a written request of the applicant submitted at the time of application. A waiver of any submission requirement may be granted only if the Planning Board finds in writing that due to special circumstances of the application, the information is not required to determine compliance with the standards of this Ordinance.

The Planning Board shall limit the extent of any submission waiver granted in order to insure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a submission waiver as it deems necessary. The party receiving the submission waiver shall comply with any additional conditions imposed concerning the submission waiver to the review and approval of the application.

### **6.4. Fees**

#### **A. Planning Board Application Fee**

An application for Planning Board approval shall include payment of an application fee of \$100.00. The application shall not be considered complete until this fee is paid. An applicant is entitled to a refund of the application portion of fee if the application is withdrawn within fifteen (15) days of date of filing, less all expenses incurred by the town of Appleton to review the application.

#### **B. Planning Board Review Fee**

An applicant submitting an application for approval by the Planning Board shall pay all reasonable and customary fees incurred by the municipality that are necessary to review the application. The review fee shall be paid in full prior to issuance of a permit.

That portion of the review fee not used shall be returned to the applicant within fourteen (14) days of the Planning Board's decision.

### **6.5. Notice of Complete Application**

Upon receipt of an application, the Planning Board shall provide the applicant with a dated receipt. Within forty (40) working days of receipt of an application, the Planning Board shall review the application and determine if the application meets the submission requirements. The Planning Board shall review any requests for a waiver from the submission requirements and shall act on these requests prior to determining the completeness of the application.

If the application is complete, the Planning Board shall notify the applicant in writing of this determination and require the applicant to provide a sufficient number of copies of the application to the: Planning Board, Code Enforcement Officer, Select Men, Road Commissioner, and Fire Department.

If the application is incomplete, the Planning Board shall notify the applicant in writing, specifying the additional materials or information required to complete the application.

If the application is deemed to be complete, and requires Planning Board review, the Planning Board with letters prepared by the applicant shall notify all abutters to the site as shown on the Assessor's records, by first-class mail, that an application has been accepted. This notice shall contain a brief description of the proposed activity and the name of the

applicant, give the location of a copy of the application available for inspection, and provide the date, time, and place of the Planning Board meeting at which the application will be considered. Failure on the part of any abutter to receive such notice shall not be grounds for delay of any consideration of the application nor denial of the project.

## **6.6. Public Hearing**

For applications for Planning Board approval under Section 5.1(B), a public hearing shall be held within forty (40) days of the notice of the complete application.

## **6.7. Approval**

Planning Board Approval. Within ninety (90) days of receiving a complete application for approval under section 5.1(B), the Planning Board shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based. However, if the Planning Board has a waiting list of applications that would prevent the Planning Board from making a decision within the required ninety (90) day time period, then a decision on the application shall be issued within sixty (60) days of the public hearing, if necessary, or within 60 days of the completed Planning Board review. This time period may be extended upon agreement between the applicant and the Planning Board.

## **Section 7. Standards of Review**

To obtain approval from the Planning Board, an application must comply with the standards in this section.

### **7.1. Planning Board Approval Standards**

A. An application for approval by the Planning Board under Section 5.1 A must meet the following standards.

1. The proposed facility is an expansion, accessory use, or colocation to a structure existing at the time the application is submitted.

2. The applicant has sufficient right, title, or interest to locate the proposed facility on the existing structure.

3. The proposed facility increases the height of the existing structure by no more than twenty (20) feet.

4. The proposed facility will be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable.

5. The proposed facility, to the greatest degree practicable, shall have no unreasonable adverse impact upon districts, sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800).

B. An application for approval by the Planning Board under Section 5.1 B must meet the following standards

1. The applicant has sufficient right, title, or interest to locate the proposed facility at the proposed location.

2. The applicant has adequate liability insurance and other provisions to safeguard the public rights and interests.

3. Priority of Locations. New wireless telecommunications facilities must be Colocated on an existing wireless telecommunications facility or other existing structure if at all possible. The applicant shall demonstrate that a facility of a higher priority cannot reasonably accommodate the applicant's proposed facility.

4. Design for Colocation. A new wireless telecommunications facility and related equipment must be designed and constructed to accommodate expansion for future colocation of at least three additional wireless telecommunications facilities or providers. However, the Planning Board may waive or modify this standard.

5. Height. A new wireless telecommunications facility must be no more than one hundred ninety five (195) feet in height.

6. Setbacks. A new or expanded wireless telecommunications facility must comply with the set back requirements of one hundred five percent (105%) of its height from all property lines. The setback may be satisfied by including the areas outside the property boundaries if secured by an easement.

7. Landscaping. A new wireless telecommunications facility and related equipment must be screened with plants from view by abutting properties, to the maximum extent practicable. Existing plants and natural land forms on the site shall also be preserved to the maximum extent practicable.

8. Fencing. A new wireless telecommunications facility must be fenced to discourage trespass on the facility and to discourage climbing on any structure by trespassers.

9. Lighting. A new wireless telecommunications facility must be illuminated only as necessary to comply with FAA or other applicable state and federal requirements. However, security lighting may be used as long as it is shielded to be down-directional to retain light within the boundaries of the site, to the maximum extent practicable.

10. Color and Materials. A new wireless telecommunications facility must be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable. Unless otherwise required, muted colors, earth tones, and subdued hues shall be used.

11. Structural Standards. A new wireless telecommunications facility must comply with the current Electronic Industries Association/ Telecommunications Industries Association (EIA/TIA) 222 Revision Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures."

12. Visual Impact. The proposed wireless telecommunications facility will have no unreasonable adverse impact upon designated scenic resources within the Town, as identified either in the municipally adopted comprehensive plan, or by a State or federal agency. In determining the potential unreasonable adverse impact of the proposed facility upon the designated scenic resources, the Planning Board shall consider the following factors:

a. The extent to which the proposed wireless telecommunications facility is visible above tree line, from the viewpoint(s) of the impacted designated scenic resource;

b. the type, number, height, and proximity of existing structures and features, and background features within the same line of sight as the proposed facility;

c. the extent to which the proposed wireless telecommunications facility would be visible from the viewpoint(s);

d. the amount of vegetative screening;

e. the distance of the proposed facility from the viewpoint and the facility's location within the designated scenic resource; and

f. the presence of reasonable alternatives that allow the facility to function consistently with its purpose.

13. Noise. During construction, repair, or replacement, operation of a back-up power generator at any time during a power failure, and testing of a back-up generator between 8 a.m. and 6 p.m. is exempt from existing municipal noise standards.

14. Historic & Archaeological Properties. The proposed facility, to the greatest degree practicable, will have no unreasonable adverse impact upon a historic district, site or structure which is currently listed on or eligible for listing on the National Register of Historic Places.

## **7.2 Standard Conditions of Approval**

The following standard conditions of approval shall be a part of any approval or conditional approval issued by the Planning Board. Where necessary to ensure that an approved project meets the criteria of this ordinance, the Planning Board can impose additional conditions of approval. Reference to the conditions of approval shall be clearly noted on the final approved site plan, and shall include:

1. The owner of the wireless telecommunications facility and his or her successors and assigns agree to:

a. respond in a timely, comprehensive manner to a request for information from a potential colocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;

b. negotiate in good faith for shared use of the wireless telecommunications facility by third parties;

c. allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for colocation.

d. require no more than a reasonable charge for shared use of the wireless telecommunications facility, based on community rates and generally accepted accounting principles. This charge may include, but is not limited to, a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction and maintenance, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the life span of the useful life of the wireless telecommunications facility.

2. Upon request by the Planning Board, the applicant shall certify compliance with all applicable FCC radio frequency emissions regulations.

### **Section 8. Amendment to an Approved Application**

Any changes to an approved application must be approved by the Planning Board, in accordance with Section 5.

### **Section 9. Abandonment**

A wireless telecommunications facility that is not operated for a continuous period of twenty-four (24) months shall be considered abandoned. The Planning Board shall notify the owner of an abandoned facility in writing and order the removal of the facility within one hundred eighty (180) days of receipt of the written notice. The owner of the facility shall have forty (40) days from the receipt of the notice to demonstrate to the planning board that the facility has not been abandoned.

If the Owner fails to show that the facility is actively being operated, the owner shall have one hundred forty (140) days to remove the facility. If the facility is not removed within this time period, the municipality may remove the facility at the owner's expense. The owner of the facility shall pay all site reclamation costs deemed necessary and reasonable to return the site to its pre-construction condition, including the removal of roads, and reestablishment of vegetation.

If a surety has been given to the municipality for removal of the facility, the owner of the facility may apply to the Planning Board for release of the surety when the facility and related equipment are removed to the satisfaction of the Planning Board.

### **Section 10. Appeals**

Any person aggrieved by a decision of the Planning Board under this ordinance may appeal the decision to the Board of Appeals. Written notice of an appeal must be filed with the Board of Appeals within thirty (30) days of the decision. The notice of appeal shall clearly state the reasons for the appeal.

### **Section 11. Administration and Enforcement**

The CEO, as appointed by the Board of Selectmen, shall enforce this ordinance. If the CEO finds that any provision of this ordinance has been violated, the CEO shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. The CEO shall order correction of the violation and may take any other legal action to ensure compliance with this ordinance.

The Selectmen, or their authorized agent, are authorized to enter into administrative consent agreements for the purpose of eliminating violations of this ordinance and recovering fines without court action. Such agreements shall not allow a violation of this ordinance to continue unless: there is clear and convincing evidence that the violation occurred as a direct result of erroneous advice given by an authorized municipal official upon which the applicant reasonably relied to its detriment and there is no evidence that the owner acted in bad faith; the removal of the violation will result in a threat to public health and safety or substantial environmental damage.

## **Section 12. Penalties**

Any person who owns or controls any building or property that violates this ordinance shall be fined in accordance with Title 30-A M.R.S.A. § 4452. Each day such violation continues after notification by the CEO shall constitute a separate offense.

## **Section 13. Conflict and Severability**

### **13.1 Conflicts with other Ordinances**

Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or of any other ordinance, regulation, or statute, the more restrictive provision shall apply.

### **13.2 Severability**

The invalidity of any part of this ordinance shall not invalidate any other part of this ordinance.

## **Section 14. Definitions**

The terms used in this ordinance shall have the following meanings:

"Antenna" means any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio or electromagnetic frequency signals.

"Antenna Height" means the vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure, even if said highest point is an antenna. Measurement of tower height shall include antenna, base pad, and other appurtenances and shall be measured from the finished grade of the facility site. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

"Colocation" means the use of a wireless telecommunications facility by more than one wireless telecommunications provider.

"Expansion" means the addition of antennas, towers, or other devices to an existing structure.

"FAA" means the Federal Aviation Administration, or its lawful successor.

"FCC" means the Federal Communications Commission, or its lawful successor.

"Height" means the vertical measurement from a point on the ground at the mean finish grade adjoining the foundation as calculated by averaging the highest and lowest finished grade around the building or structure, to the highest point of the building or structure. The highest point shall exclude farm building components, flagpoles, chimneys, ventilators, skylights,

domes, water towers, bell towers, church spires, processing towers, tanks, bulkheads, or other building accessory features usually erected at a height greater than the main roofs of buildings.

"Historic or Archaeological Resources" means resources that are:

1. Listed individually in the National Register of Historic Places or eligible for listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs approved by the Secretary of the Interior;
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by Secretary of the Interior through the Maine Historic Preservation Commission; or
5. Areas identified by a governmental agency such as the Maine Historic Preservation Commission as having significant value as an historic or archaeological resource and any areas identified in the municipality's comprehensive plan, which have been listed or are eligible to be listed on the National Register of Historic Places.

"Historic District" means a geographically definable area possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united by past events or aesthetically by plan or physical development and identified in the municipality's comprehensive plan, which is listed or is eligible to be listed on the National Register of Historic Places. Such historic districts may also comprise individual elements separated geographically, but linked by association or history.

"Historic Landmark" means any improvement, building or structure of particular historic or architectural significance to the Town relating to its heritage, cultural, social, economic or political history, or which exemplifies historic personages or important events in local, state or national history identified in the municipality's comprehensive plan, which have been listed or are eligible to be listed on the National Register of Historic Places.

"Line of sight" means the direct view of the object from the designated scenic resource.

"Parabolic Antenna" (also known as a satellite dish antenna) means an antenna which is bowl-shaped, designed for the reception and or transmission of radio frequency communication signals in a specific directional pattern.

"Principal Use" means the use other than one which is wholly incidental or accessory to another use on the same premises.

"Public Recreational Facility" means a regionally or locally significant facility, as defined and identified either by State statute or in the municipality's adopted comprehensive plan, designed to serve the recreational needs of municipal property owners.

"Designated Scenic Resource" means that specific location, view, or corridor, as identified as a scenic resource in the municipally adopted comprehensive plan or by a State or federal agency, that consists of:

1. a three dimensional area extending out from a particular viewpoint on a public way or within a public recreational area, focusing on a single object, such as a mountain, resulting in a narrow corridor, or a group of objects, such as a downtown skyline or mountain range, resulting in a panoramic view corridor; or
2. lateral terrain features such as valley sides or woodland as observed to either side of the observer, constraining the view into a narrow or particular field, as seen from a viewpoint on a public way or within a public recreational area.

"Targeted Market Coverage Area" means the area which is targeted to be served by this proposed telecommunications facility.

"Unreasonable Adverse Impact" means that the proposed project would produce an end result which is:

1. excessively out-of-character with the designated scenic resources affected, including existing buildings structures and features within the designated scenic resource, and
2. would significantly diminish the scenic value of the designated scenic resource.

"Viewpoint" means that location which is identified either in the municipally adopted comprehensive plan or by a federal or State agency, and which serves as the basis for the location and determination of a particular designated scenic resource.

"Wireless Telecommunications Facility" or "Facility" means any structure, antenna, tower, or other device which provides radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services,

specialized mobile radio communications (SMR), common carrier wireless exchange phone services, common carrier wireless exchange access services, and personal communications service (PCS) or pager services.

**Section 15. Certificate of Adoption**

I hereby attest that this is a true copy of the Wireless Telecommunications Facility Siting Ordinance for the Town of Appleton, Maine duly adopted on June 11, 2002.

\_\_\_\_\_  
Appleton Town Clerk

\_\_\_\_\_  
Appleton Town Seal

\_\_\_\_\_  
Date

# **Town of Appleton, Maine**

## **Wind Energy Facility Ordinance**

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**1.0 Title**

This Ordinance shall be known as the Wind Energy Facility Ordinance for Appleton, Me.

**2.0 Authority**

This Ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section 1 of the Maine Constitution; the provisions of 30-A M.R.S. § 3001 (Home Rule), and the provisions of the Planning and Land Use Regulation Act, 30-A M.R.S. § 4312, *et seq.*

**3.0 Purpose**

The purpose of the Ordinance is to provide for the construction and operation of Wind Energy Facilities in the Town of Appleton, subject to reasonable conditions that will protect the public health, safety, and welfare.

**4.0 Definitions**

Applicant is the legal entity, including successors and assigns, that files an application under this Ordinance.

Approved Residential Subdivision means a residential subdivision for which all applicable land use permits have been issued, provided that the time for beginning construction under such permits has not expired.

Associated Facilities means elements of a Wind Energy Facility other than its Generating Facilities that are necessary to the proper operation and maintenance of the Wind Energy Facility, including but not limited to buildings, access roads, Generator Lead Lines and substations.

CEO means code enforcement officer.

DEP Certification means a certification issued by the Department of Environmental Protection pursuant to 35-A M.R.S. § 3456 for a Wind Energy Development.

Generating Facilities means Wind Turbines and electrical lines, not including Generator Lead Lines, that are immediately associated with the Wind Turbines.

Generator Lead Line means a "generator interconnection transmission facility" as defined by 35-A M.R.S. § 3132 (1-B).

Historic Area means an Historic Site administered by the Bureau of Parks and Recreation of the Maine Department of Conservation.

Historic Site means any site, structure, district or archaeological site which has been officially included on the National Register of Historic Places and/or on the Maine Historic Resource Inventory, or which is established by qualified testimony as being of historic significance.

Locally-Designated Passive Recreation Area means any site or area designated by a municipality for passive recreation that is open and maintained for public use and which: a) has fixed boundaries, b) is owned in fee simple by a municipality or is accessible by virtue of public easement, c) is identified and described in a local comprehensive plan and, d) has been identified and designated at least nine months prior to the submission of the Applicant's Wind Energy Facility permit application.

Meteorological Tower (MET Tower) means a Tower used for the measurement and collection of wind data that supports various types of equipment, including but not limited to anemometers, data recorders, and solar power panels. MET Towers may also include wildlife related equipment such as ANABAT detectors, bird diverts and wildlife entanglement protectors.

Municipal Reviewing Authority means the municipal planning board or if none, the municipal officers.

Nacelle means the frame and housing at the top of the Tower that encloses the gearbox and generator.

Non-Participating Landowner means any landowner, other than a Participating Landowner whose land is located within the Town of Appleton..

Occupied Building means a residence, school, hospital, house of worship, public library or other building that is occupied or in use as a primary residence or is customarily frequented by the public at the time when the permit application is submitted.

Participating Landowner means one or more Persons that hold title in fee or a leasehold interest with sublease rights to property on which Generating Facilities or Associated Facilities are proposed to be located pursuant to an agreement with the Applicant or an entity that has entered into an appropriate agreement with the Applicant allowing the Applicant to demonstrate the requisite right, title and interest in such property.

P.B. means Town of Appleton Planning Board.

Person means an individual, corporation, partnership, firm, organization or other legal entity.

Planned Residence means a Residence for which all applicable building and land use permits have been issued, provided that the time for beginning construction under such permits has not expired.

Protected Location means any location that is:

1) accessible by foot, on a parcel of land owned by a Non-Participating Landowner containing a residence or planned residence, or an approved residential subdivision, house of worship, academic school, college, library, duly licensed hospital or nursing home near the development site at the time an application for a Wind Energy Facility is submitted under this Ordinance;

2) a nature preserve owned by a land trust, the Maine Audubon Society or the Maine chapter of the Nature Conservancy, a federally designated wilderness area, a state wilderness area designated by statute, a municipal park or a locally-designated passive recreation area, or any location within consolidated public reserve lands designated by rule by the Bureau of Public Lands as a Protected Location, or;

3) a hotel, motel, campsite or duly licensed campground that the municipal authority responsible for review and approval of the pending application under 9.1 has designated a Protected Location after making a determination that the health and welfare of the guests or the economic viability of the establishment will be unreasonably impacted by noise in excess of that allowed under section 13.1.3(b).

Residence means a building or structure, including manufactured housing, maintained for permanent or seasonal residential occupancy providing living, cooking and sleeping facilities and having permanent indoor or outdoor sanitary facilities, excluding recreational vehicles, tents and watercraft.

Scenic Resource means either a Scenic Resource of state or national significance, as defined in 35-A M.R.S § 3451(9) or a scenic resource of local significance located within the municipality and identified as such in a comprehensive plan, open space plan or scenic inventory adopted by the municipal legislative body.

Shadow Flicker means alternating changes in light intensity caused by the movement of Wind Turbine blades casting shadows on the ground or a stationary object.

Short Duration Repetitive Sounds means a sequence of repetitive sounds which occur more than once within an hour, each clearly discernible as an event and causing an increase in the sound level of at least 6 dBA on the fast meter response above the sound level observed immediately before and after the event, each typically less than ten seconds in duration, and which are inherent to the process or operation of the development and are foreseeable.

Sight Line Representation means a profile drawing showing prominent features, including but not limited to topography, buildings, and trees, along and in relation to a line of sight extending from an observer's eye to the lowest point visible on a proposed Tower.

Significant Wildlife Habitat means a Significant Wildlife Habitat as defined in 38 M.R.S. § 480-B (10).

Substantial Start means that construction shall be considered to be substantially commenced when any work beyond excavation, including but not limited to, the pouring of a slab or footings, the installation of piles , the construction of columns, or the placement of a Tower on a foundation has begun.

Tower means the free-standing structure on which a wind measuring or energy conversion system is mounted.

Turbine Height means the distance measured from the surface of the ground to the highest point of any turbine rotor blade measured at the highest arc of the blade.

Wind Energy Facility means a facility that uses one or more Wind Turbines to convert wind energy to electrical energy. A Wind Energy Facility includes Generating Facilities and Associated Facilities.

Wind Energy Facility, Type 1A means a Wind Energy Facility having a maximum generating capacity of less than 100kW, a maximum of one Wind Turbine and a maximum Turbine Height of 120 feet.

Wind Energy Facility, Type 1B means a Wind Energy Facility having a maximum generating capacity of less than 100kW and either more than one Wind Turbine, or one Wind Turbine with a Turbine Height greater than 120 feet.

Wind Energy Facility, Type 2 means a Wind Energy Facility having a generating capacity of 100 kW or greater and which does not require a state permit issued by the Department of Environmental Protection under the Site Location of Development Act, 38 M.R.S. §481, *et seq.*

Wind Energy Facility, Type 3 means a Wind Energy Facility having a generating capacity of 100kW or greater and which requires a state permit issued by the Department of Environmental Protection under the Site Location of Development Act, 38 M.R.S. §481, *et seq.*

Wind Turbine means a system for the conversion of wind energy into electricity which is comprised of a Tower, generator, Nacelle, rotor and transformer.

## **5.0 Applicability**

- 5.1 This Ordinance applies to any Wind Energy Facility proposed for construction in Appleton after the effective date of this Ordinance. This Ordinance does not apply to Associated Facilities unless the Generating Facilities are located within Appleton, in which case this Ordinance applies to both the Generating Facilities and the Associated Facilities.
- 5.2 A Wind Energy Facility that is the subject of an application determined to be complete by the CEO or PB prior to the effective date of this Ordinance shall not be required to meet the

requirements of this Ordinance; provided that any physical modifications after the effective date of the Ordinance shall be subject to the permitting requirements of Section 9.2.

## 6.0 Conflict and Severability

- 6.1 Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute administered by the municipality, the more restrictive provision shall control.
- 6.2 Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of the Ordinance.

## 7.0 Effective Date

This Ordinance becomes effective upon its adoption at town meeting.

## 8.0 Classification of Wind Energy Facilities

All Wind Energy Facilities shall be classified in accordance with Table 1 below:

**Table 1: Classification of Wind Energy Facilities and Corresponding Local Review and Approval Authority**

Facility Type	Aggregate Capacity	Turbine Height	Max. # of Turbines	DEP Site Location Permit Required	Local Review and Approval
1A	<100 kW	≤ 120'	1	No	CEO
1B	<100 kW	> 120'	NA	No	PB
2	≥100 kW	NA	NA	No <sup>1</sup>	PB
3	≥ 100 kW	NA	NA	Yes <sup>2</sup>	PB

<sup>1</sup> Per 35-A MRS §3456. DEP Certificate required if energy generated is for sale or use by a Person other than the generator.

<sup>2</sup> Per 38 MRS §482(2)

## 9.0 Administration

### 9.1 Review and Approval Authority

1. The CEO is authorized to review all applications for Type 1A Wind Energy Facilities and MET Towers pursuant to section 11.0, and may approve, deny or approve such applications with conditions in accordance with the standards of the Ordinance.
2. The PB is authorized to review all applications for Type 1B, Type 2, and Type 3 Wind Energy Facilities and may approve, deny or approve such applications with conditions in accordance with this Ordinance.

## 9.2 Permit Required

1. No Wind Energy Facility shall be constructed or located within Appleton without a permit issued in accordance with this Ordinance.
2. Any physical modification to an existing Wind Energy Facility that materially alters the location or increases the area of development on the site or that increases the Turbine Height or the level of sound emissions of any Wind Turbine shall require a permit modification under this Ordinance. Like-kind replacements and routine maintenance and repairs shall not require a permit modification.

## 9.3 Permit Applications

1. Application components. A Wind Energy Facility permit application shall consist of the application form, application fee, and supporting documents, as described below:
  - a. Application Forms. The municipality shall provide the application form which shall be signed by: 1) a Person with right, title and interest in the subject property or; 2) a Person having written authorization from a Person with right, title and interest in the subject property. The signature shall be dated and the signatory shall certify that the information in the application is complete and correct and that the proposed facility will be constructed and operated in accordance with the standards of this ordinance and all approval and permit conditions, if any.
  - b. Application Fees. Application fees shall be assessed and paid upon submission of the application in accordance with Appendix A of this Ordinance.
  - c. Supporting Documents. The application shall include all additional documents necessary to satisfy the applicable submission requirements under section 10 of this Ordinance.
2. Application Submission. The Applicant shall submit its application for a Wind Energy Facility permit to the CEO who shall note on the application the date on which it was received. It shall be the duty of the CEO to determine who has the authority to administer this ordinance using table 1. and section 9.1 as guides.
3. Changes to a Pending Application
  - a. The Applicant shall promptly notify the municipal entity responsible for review and approval of a pending application under section 9.1 of any changes the Applicant proposes to make to information contained in the application.

- b. If changes are proposed to a pending application after a public hearing has been held, the PB may consider those changes and continue with the review and approval process without a renewed public hearing if it determines that the changes do not materially alter the application. If the PB determines that the proposed changes do materially alter the application it shall schedule and conduct another public hearing within 30 days of that determination. In making its determination, the PB shall consider whether the proposed changes involve potential adverse effects different than or in addition to those addressed in the initial application.

#### 9.4 Permit Application Procedures

##### 1. Type 1A Wind Energy Facility Application

- a. Within 10 days after receiving an application, the CEO shall notify the Applicant in writing either that the application is complete or, if the application is incomplete, the specific additional material needed to complete the application. The CEO may waive any submission requirement if the CEO issues a written finding that, due to special circumstances of the application, adherence to that requirement is not necessary to determine compliance with the standards of this Ordinance.
- b. Within 30 days after determining the application to be complete, the CEO shall issue a written order: 1) denying approval of the proposed Wind Energy Facility, 2) granting approval of the proposed Wind Energy Facility or, 3) granting approval of the proposed Wind Energy Facility with conditions. In making the decision, the CEO shall make findings on whether the proposed Wind Energy Facility meets the applicable criteria described in sections 12 and 13.
- c. With the agreement of the applicant, the CEO may extend the procedural time frames of this section.

##### 2. Type 1B, Type 2 and Type 3 Wind Energy Facility Applications

- a. The Applicant is strongly encouraged to meet with the CEO before submitting an application. At this pre-application meeting, the CEO will explain the Ordinance's provisions, application forms, and submission requirements. The Applicant should provide photos of the proposed site and written descriptions of the proposed facility and the proposed site, including its location and lot area.
- b. Within 45 days after receipt of the application the PB shall notify the Applicant in writing either that the application is complete or, if the application is incomplete, the specific additional material needed to complete the application. The PB may waive any submission requirement if it issues a written finding that, due to special

circumstances of the application, adherence to that requirement is not necessary to determine compliance with the standards of this Ordinance.

- c. The PB shall hold a public hearing for a Type 2 or Type 3 Wind Energy Facility application within 60 days after determining that the application is complete. The PB may decide to hold a public hearing for a Type 1B Wind Energy Facility application. If it decides to hold a public hearing for a Type 1B application, the PB shall hold that hearing within 45 days after determining that application is complete.
- d. Within 60 days after determining that an application for a Type 1B Wind Energy Facility is complete or within 90 days after determining that an application for a Type 2 or Type 3 Wind Energy Facility is complete, the PB shall issue a written order: 1) denying approval of the proposed Wind Energy Facility, 2) granting approval of the proposed Wind Energy Facility or, 3) granting approval of the proposed Wind Energy Facility with conditions. In making its decision, the PB shall make findings on whether the proposed Wind Energy Facility meets the applicable criteria described in sections 12, 13, and 14.
- e. With the agreement of the applicant, the PB may extend the procedural time frames of this section.

**Table 2:  
Procedural Time Frames**

Facility Type	Application Completeness	Public Hearing	Final Decision
1A	≤10 days <sup>1</sup>	NA	<u>&lt;30 days</u> <sup>2</sup>
1B	≤45 days <sup>3</sup>	<u>&lt;45 days</u> <sup>2</sup>	≤60 days <sup>2</sup>
2	≤45 days <sup>3</sup>	≤60 days <sup>2</sup>	≤90 days <sup>2</sup>
3	≤45 days <sup>3</sup>	≤60 days <sup>2</sup>	<u>&lt;90 days</u> <sup>2</sup>

<sup>1</sup> Days after receipt of the application by the CEO  
<sup>2</sup> Days after the application is determined to be complete  
<sup>3</sup> Days after the application is received by the PB

### 9.5 Notice of Meetings

The applicant for a Type 1B, Type 2, or Type 3 Wind Energy Facility is required to deliver a copy of a completed application to the Appleton Town Office at least 7 days prior to the monthly PB Meeting. The application will be copied, distributed, and considered to be “received” at that meeting, but will be reviewed at the following month’s meeting. The Appleton Town Office will send notice by First Class Mail to all owners of property abutting the property on which the Wind Energy Facility is proposed to be located. The notice shall state the date, time, and place of the meeting and the proposed location and



the classification of the proposed Wind Energy Facility.

## 9.6 Public Hearings

The PB shall have notice of the date, time, and place of any public hearing including the proposed location and the classification of the proposed Wind Energy Facility:

1. Published at least once in a newspaper having general circulation within the municipality. The date of the first publication shall be at least 10 days before the hearing.
2. Mailed by first class mail to the Applicant and to owners of property within 500 feet of the property on which the Wind Energy Facility is proposed to be located, at least 10 days before the public hearing. The PB shall maintain a list of property owners to whom notice is mailed in the application file. Failure of any of these property owners to receive a notice shall not invalidate the public hearing, nor shall it require the PB to schedule another hearing.

## 9.7 Professional Services

In reviewing the application for compliance with this Ordinance, the PB may retain professional services, including but not limited to those of an attorney or consultant, to verify information presented by the Applicant. The attorney or consultant shall first estimate the reasonable cost of such review and the Applicant shall deposit, with the Town of Appleton, the full estimated cost, which the municipality shall place in an escrow account. The municipality shall pay the attorney or consultant from the escrow account and reimburse the Applicant if funds remain after payment.

## 9.8 Expiration of Permits

Permits shall expire: 1) two years after the date of approval unless a substantial start on construction has occurred and; 2) three years after the date of approval unless construction of the Wind Energy Facility has been completed. If a permit for a Type 2 or Type 3 Wind Energy Facility expires, the Applicant shall implement pertinent provisions of the approved decommissioning plan. Upon the Applicant's written request, the municipal entity responsible for review and approval of the application under section 9.1 may extend either or both expiration time limits by one year.

## 9.9 Access

The CEO shall have access to the site at all times to review the progress of the work and shall have the authority to review all records and documents directly related to the design, construction and operation of the facility.

## 9.10 Enforcement

1. It shall be unlawful for any Person to violate or fail to comply with or take any action that is contrary to the terms of the Ordinance, or to violate or fail to comply with any permit issued under the Ordinance, or to cause another to violate or fail to comply or take any action which is contrary to the terms of the Ordinance or any permit under the Ordinance.
2. If the CEO determines that a violation of the Ordinance or the permit has occurred, the CEO shall provide written notice to any Person alleged to be in violation of this Ordinance or permit. If the alleged violation does not pose an immediate threat to public health or safety, the CEO and the alleged violator shall engage in good faith negotiations to resolve the alleged violation. Such negotiations shall be conducted within thirty (30) days of the notice of violation and, with the consent of the alleged violator, may be extended.
3. If, after thirty (30) days from the date of notice of violation or further period as agreed to by the alleged violator, the CEO determines, in the officer's reasonable discretion, that the parties have not resolved the alleged violation, the CEO may institute civil enforcement proceedings or any other remedy at law to ensure compliance with the Ordinance or permit.

#### 9.11 Appeals

If the CEO or PB disapproves an application or grants approval with conditions that are objectionable to the applicant or any abutting landowner or any aggrieved party, or when it is claimed that the provisions of this Ordinance do not apply, or that the true intent and meaning of this Ordinance has been misconstrued or wrongfully interpreted, the applicant, an abutting landowner, or aggrieved party may appeal the decision of the CEO or PB in writing to the Board of Appeals within thirty (30) days of the CEO or PB decision. The Board of Appeals may reverse the CEO or PB decision after holding a public hearing and may grant a variance as defined herein. Public hearings shall be held in accordance with 30-A MRSA § 2691.

#### 9.12 Mitigation Waiver Agreement

Non- Participating Land owners may waive certain specified protections in this ordinance using a written, legally enforceable Mitigation Waiver negotiated between the wind turbine Applicant and the non-participating Landowner, who thereby becomes a participating Landowner. Complete copies of executed Mitigation Waiver must be included with the submission of the WEF Application. The Mitigation Waiver must be recorded in the Knox County Registry of Deeds, and describe the benefited and burdened properties. Any subsequent deed must advise all subsequent owners of the burdened property.

### 10.0 Application Submission Requirements

#### 10.1 General Submission Requirements

1. A completed application form including:
  - a. The Applicant and Participating Landowner(s)' name(s) and contact information.
  - b. The physical address, tax map and lot numbers, zone and owner(s) of the proposed facility site and any contiguous parcels owned by Participating Landowners.
  - c. The tax map and lot numbers, zone, current use, owner(s) and mailing addresses of owner(s) of parcels that abut the proposed facility site or abut parcels of Participating Landowners that are contiguous with the proposed facility site (Not required for Type 1A applications)
  - d. An affirmation, signed and dated by the Applicant, that the information provided in the application is correct and that the proposed Wind Energy Facility, if approved and built, shall be constructed and operated in accordance with the standards of this ordinance and all conditions of approval, if any
  - e. The applicant has the burden of proving that all information in this application is accurate and true. The approval of this permit in no way relieves the applicant of this burden, nor does it constitute a resolution in favor of the applicant of any issues. The applicant would be well advised to resolve any problems before expending money in reliance on this permit.
2. Receipt showing payment of application fee in accordance with Appendix A.
3. A copy of a deed, easement, purchase option or other comparable documentation demonstrating that the Applicant has right, title or interest in the proposed facility site.
4. Location map showing the boundaries of the proposed facility site and all contiguous property under total or partial control of the Applicant or Participating Landowner(s) and any Scenic Resource or Historic Site within 2500 feet of the proposed development.
5. Description of the proposed Wind Energy Facility that includes facility type, the number and aggregate generating capacity of all Wind Turbines, the Turbine Height and manufacturer's specifications for each Wind Turbine (including but not limited to the make, model, maximum generating capacity, sound emission levels and types of overspeed controls) and a description of Associated Facilities.
6. Site plan showing the proposed location of each Wind Turbine and Associated Facilities and any of the following features located within 500 feet of any Wind Turbine: parcel boundaries, required setbacks, topographic contour lines (maximum 20-foot interval), roads, rights-of-way, overhead utility lines, buildings (identified by use), land cover, wetlands, streams, water bodies, shoreland zoning and areas proposed to be re-graded or cleared of vegetation.

- a. In addition to the information in 6, above, site plans for Type 1B, Type 2 and Type 3 Wind Energy Facilities shall show the location and average height of tree cover to be retained and the location, variety, planting height and mature height of proposed trees, if any.
7. Written evidence that the Environmental Coordinator of the Maine Department of Inland Fisheries and Wildlife (MDIFW) and that the Maine Natural Areas Program (MNAP) have both been notified of the pending application and the location and Turbine Height of all proposed Wind Turbines.
8. Written evidence that the provider of electrical service to the property has been notified of the intent to connect an electric generator to the electricity grid, if such connection is proposed.
9. Description of emergency and normal shutdown procedures.
10. Photographs of existing conditions at the site.
11. An application for a Type 1A or 1B Wind Energy Facility shall include structural drawings of the Tower foundation and anchoring system: a) prepared by the Wind Turbine or Tower manufacturer, b) prepared in accordance with the manufacturer's specifications or, c) prepared and stamped by a Maine-licensed professional engineer.
12. An application for a Type 1A or Type 1B Wind Energy Facility shall include:
  - a. A written statement, signed by the Applicant, that certifies that the proposed facility is designed to meet the applicable noise control standards under section 13.1.3 and acknowledges the Applicant's obligation to take remedial action in accordance with section 13.1.6 if the CEO determines those standards are not being met or;
  - b. A written request for review under section 14.1 along with information required under Appendix B, subsection B (Submissions).
13. An Application for Type 1B, Type 2 or Type 3 Wind Energy Facility shall include the following site line, photographic and, if applicable, screening information, provided that an Applicant for a Type 3 Wind Energy Facility may provide this information as part of a visual assessment if required pursuant to section 14.5:
  - a. Sight Line Representations of each Wind Turbine from the nearest Occupied Building and from at least one other representative location within 500 feet of the Wind Turbine, such as a Scenic Resource or another Occupied Building. Each Site Line Representation shall be drawn at a scale sufficiently large to make it legible. If screening is proposed, the proposed screening device, such as trees, shrubs or fencing, shall be depicted on the drawing along with the sight line as altered by the screening.

- b. A current four-inch by six-inch color photograph of the proposed site of the Wind Turbine(s) taken from viewpoints corresponding to each of the Site Line Representations.
  - c. One copy of each of the photographs described in b, above, onto which is superimposed an accurately-scaled and sited representation of the Wind Turbine (s).
14. An application for a Type 2 Wind Energy Facility that generates energy primarily for sale or use by a Person other than the generator, shall include, if issued at the time of application, certification from the Department of Environmental Protection pursuant to 35-A M.R.S. § 3456 that the Wind Energy Facility:
- a. Will meet the requirements of the noise control rules adopted by the Board of Environmental Protection pursuant to the Site Location of Development Act, 38 M.R.S. §481, *et seq.* ;
  - b. Will be designed and sited to avoid unreasonable adverse Shadow Flicker effects; and
  - c. Will be constructed with setbacks adequate to protect public safety.

If such certification has not been issued at the time of application, the Applicant shall include written evidence that the Applicant has applied for certification.

#### 10.2 Additional Submission Requirements for an Application for a Type 2 and 3 Wind Energy Facility

1. Certificates of design compliance obtained by the equipment manufacturers from Underwriters Laboratories, Det Norske Veritas, or other similar certifying organizations.
2. Decommissioning plan in conformance with Appendix C.
3. Written summary of operation and maintenance procedures for the Wind Energy Facility and a maintenance plan for access roads, erosion and sedimentation controls and storm water management facilities.
4. Standard boundary survey of the subject property stamped by a Maine-licensed surveyor.
5. Visual impact assessment, if required pursuant to section 14.5.
6. Stormwater management plan stamped by a Maine-licensed professional engineer.
7. Sound level analysis, prepared by a qualified engineer, which addresses the standards of section 14.1.
8. Shadow Flicker analysis based on WindPro or other modeling software approved by the Department of Environmental Protection.

9. Foundation and anchoring system drawings that are stamped by a Maine-licensed professional engineer.
10. Other relevant studies, reports, certifications and approvals as may be reasonably requested by the PB to ensure compliance with this Ordinance.

## **11.0 Meteorological Towers (MET Towers)**

Applications for Meteorological (MET) Towers shall be subject to the submission and review standards for a Type 1A Wind Energy Facility, as applicable, except that no height limitation shall apply. A permit for a MET Tower shall be valid for 2 years and 2 months from the date of issuance. The CEO may grant one or more one-year extensions of this permit period. Within 30 days following removal of a MET Tower, the Applicant shall restore the site to its original condition to the extent practicable. The provisions of this section do not apply to permanent MET Towers included as Associated Facilities in approved Wind Energy Facility applications.

## **12.0 General Standards**

### **12.1 Setback Requirements**

1. Type 1A and 1B Wind Turbines shall be set back a horizontal distance equivalent to 100% of the Turbine Height from property boundaries, public and private rights-of-way and overhead utility lines that are not part of the proposed Generating Facility.
2. Type 2 and 3 Wind Turbines shall be set back a horizontal distance equivalent to 150% of the Turbine Height from property boundaries, public and private rights-of-way and overhead utility lines that are not part of the proposed Generating Facility except that the entity responsible for review and approval of the application may allow a reduced setback if the Applicant submits, in writing: 1) a waiver of the property boundary setback signed by the pertinent abutting landowner or; 2) evidence, such as operating protocols, safety programs, or recommendations from the manufacturer or a licensed professional engineer with appropriate expertise and experience with Wind Turbines, that demonstrates that the reduced setback proposed by the Applicant is appropriate.
3. Type 1B Wind Turbines shall be set back not less than 500 feet from any occupied structure on any Non- Participating Parcel. This may not be waived.
4. Type 2 & 3 Wind Turbines shall be set back not less than 1500 feet from any occupied structure on any Non- Participating Parcel. This may not be waived.
5. Type 2 & 3 Wind Turbines shall be set back not less than 2000 feet from any occupied structure on any Non- Participating Parcel. Property owners may waive this set back with a written Mitigation Waiver agreement. However the 1500' set back still applies.
6. All set-back distance measurements shall be based on horizontal distances.

### **12.2 Natural Resource Protection**

A Wind Energy Facility shall not have an unreasonable adverse effect on rare, threatened, or endangered wildlife, significant wildlife habitat, rare, threatened or endangered plants and rare and exemplary plant communities. In making its determination under this subsection, the municipal entity responsible for review and approval of the permit application under section 9.1 shall consider pertinent application materials and the written comments and/or recommendations, if any, of the Maine Department of Inland Fisheries and Wildlife (MDIFW) Environmental Coordinator and the Maine Natural Areas Program (MNAP).

### 12.3 Building Permit

All wind energy facilities require a building permit. All components of the Wind Energy Facility shall conform to relevant and applicable local ordinances and state building codes.

### 12.4 Overspeed Controls and Brakes

Each Wind Turbine shall be equipped with an overspeed control system that: 1) includes both an aerodynamic control such as stall regulation, variable blade pitch, or other similar system, and a mechanical brake that operates in fail safe mode; or 2) has been designed by the manufacturer or a licensed civil engineer and found by the municipal entity responsible for review and approval of the application under 9.1, based on its review of a written description of the design and function of the system, to meet the needs of public safety.

### 12.5 Electrical Components and Interconnections

All electrical components of the Wind Energy Facility shall conform to relevant and applicable local, state, and national codes.

### 12.6 Access

All ground-mounted electrical and control equipment and all access doors to a Wind Turbine shall be labeled and secured to prevent unauthorized access. A Wind Tower shall not be climbable up to a minimum of fifteen (15) feet above ground surface.

### 12.7 Blade Clearance

The minimum distance between the ground and all blades of a Wind Turbine shall be 25 feet as measured at the lowest arc of the blades.

### 12.8 Signal Interference

The Applicant shall make reasonable efforts to avoid and mitigate to the extent practicable any disruption or loss of radio, telephone, television, or similar signals caused by the Wind Energy Facility.

### 12.9 Erosion Control

Erosion of soil and sedimentation shall be minimized by employing “best management practices” in the “*Maine Erosion Control Handbook for Construction: Best Management Practices*”, March 2003.

#### 12.10 Building-Mounted Wind Turbines

Building-mounted Wind Turbines are not permitted.

#### 12.11 Visual Appearance

1. A Wind Turbine shall be a non-obtrusive color such as white, off-white or gray, or as may otherwise be required by another governmental agency with jurisdiction over the Wind Energy Facility.
2. A Wind Turbine shall not be lighted artificially, except to the extent consistent with Federal Aviation Administration recommendations or other applicable authority that regulates air safety or as is otherwise required by another governmental agency with jurisdiction over the Wind Energy Facility.
3. A Wind Turbine shall not be used to support signs and shall not display advertising except for reasonable and incidental identification of the turbine manufacturer, facility owner and operator, and for warnings.

#### 12.12 Visibility of Wind Turbine

The following requirements apply, to the extent practicable, to Type 1B, Type 2 & Type 3 Wind Energy Facilities:

1. To the extent that doing so does not inhibit adequate access to the wind resource, each Wind Turbine shall be located to maximize the effectiveness of existing vegetation, structures and topographic features in screening views of the Wind Turbine from Occupied Buildings and Scenic Resources.
2. When existing features do not screen views of a Wind Turbine from Residences and Scenic Resources, screening may be required, where feasible and effective, through the planting of trees and/or shrubs. In order to maximize the screening effect and minimize wind turbulence near the Wind Turbine, plantings should be situated as near as possible to the point from which the Wind Turbine is being viewed. Such plantings should be of native varieties.

### **13.0 Special Standards for Type 1A and Type 1B Wind Energy Facilities**

- 13.1 Noise emanating from a Type 1A or Type 1B Wind Energy Facility shall be controlled in accordance with the provisions of this section or, upon the written request of the applicant, the provisions of section 14.1. If the Applicant chooses review under section 14.1, the provisions of 13.1.1, 13.1.2 and 13.1.6 shall apply, but the provisions of 13.1.3, 13.1.4 and 13.1.5 shall not apply.



1. The sound level limits contained in this section apply only to areas that are defined as Protected Locations and to property boundaries that describe the outer limits of the facility site in combination with any parcel(s) owned by a Participating Land-Owner that are contiguous with the facility site .
2. The sound level limits contained in this section do not apply to the facility site or any parcel(s) owned by a Participating Land-Owner that are contiguous with the facility site.
3. The sound levels resulting from routine operation of a Wind Energy Facility, as measured in accordance with the procedures described in section 13.1.5 shall not exceed the limits specified for the following locations and times:
  - a. At a Protected Location with no living and sleeping quarters:

55 dBA during the Protected Location's regular hours of operation
  - b. At a Protected Location with living and sleeping quarters:
    1. Area(s) within 500 feet of living and sleeping quarters:

45 dBA between 6:00 p.m. and 8:00 a.m.

55 dBa between 8:00 a.m. and 6:00 p.m.
    2. Area(s) more than 500 feet from living and sleeping quarters:

55dBA at all times.
  - c. At property boundaries that describe the outer limits of the facility site combined with any parcel(s) owned by a Participating Land-Owner that are contiguous with the facility site:

75 dBA at all times.
4. If the Applicant submits the certification and acknowledgement required by Section 10.1.12(a), the municipal entity responsible for review and approval of the application under Section 9.1 shall determine, for purposes of issuing its approval, that the pertinent sound-level limits under section 13.1.1 have been met, subject to the Applicant's obligation to take remedial action as necessary under section 13.1.6.
5. The CEO shall perform measurements of sound levels resulting from routine operation of an installed Type 1A or Type 1B Wind Energy Facility at the officer's own initiative or in response to a noise-related complaint to determine compliance with the pertinent standards in section 13.1.1. Such measurements shall be performed as follows:

- a. Measurements shall be obtained during representative weather conditions when the sound of the Wind Energy Facility is most clearly noticeable. Preferable weather conditions for sound measurements at distances greater than about 500 feet from the sound source include overcast days when the measurement location is downwind of the Wind Turbine and inversion periods (which most commonly occur at night).
  - b. Sound levels shall be measured at least four (4) feet above the ground by a meter set on the A-weighted response scale, fast response. The meter shall meet the latest version of American National Standards Institute (ANSI S1.4.) "American Standard Specification for General Purpose Sound Level Meters" and shall have been calibrated at a recognized laboratory within the past year.
  - c. 5 dBA shall be added to sound levels of any Short Duration Repetitive Sound measured in accordance with paragraphs a and b.
6. The Applicant shall operate the proposed Wind Energy Facility in conformance with the sound level limits of section 13.1 or section 14.1, as applicable. If, based on post-installation measurements taken in accordance with section 13.1.1 or section 14.1, as applicable, the CEO determines that the applicable sound-level limits are not being met, the Applicant shall, at the Applicant's expense and in accordance with the Town of Appleton Wind Energy Facility Ordinance and in consultation with the CEO, take remedial action deemed necessary by the CEO to ensure compliance with those limits. Remedial action that the CEO may require, includes, but shall not be limited to, one or more of the following:
- a. modification or limitation of operations during certain hours or wind conditions;
  - b. maintenance, repair, modification or replacement of equipment;
  - c. relocation of the Wind Turbine(s); and,
  - d. removal of the Wind Turbine(s) provided that the CEO may require removal of the Wind Turbine(s) only if the CEO determines that there is no practicable alternative.

## **14.0 Special Standards for Type 2 and Type 3 Wind Energy Facilities**

### **14.1 Control of Noise**

Noise emanating from a Type 2 Wind Energy Facility, a Type 3 Wind Energy Facility, or, upon written request of the Applicant pursuant to section 13.1, a Type 1A or Type 1B Wind Energy Facility shall be controlled in accordance with the provisions of Appendix B

If there is a conflict between a provision of Appendix B and another provision of this ordinance, the provision of Appendix B shall apply.

### **14.2 Use of Public Roads**

1. The Applicant shall identify all state and local public roads to be used within Town of Appleton to transport equipment and parts for construction, operation or maintenance of a Type 2 or Type 3 Wind Energy Facility.
2. The Road Commissioner or a qualified third-party engineer reasonably acceptable to both the PB and the Applicant and paid for by the Applicant pursuant to Section 9.7 of the Ordinance, shall document road conditions prior to construction. The Road Commissioner or third-party engineer shall document road conditions again thirty (30) days after construction is complete or as weather permits.
3. The Applicant shall demonstrate, to the satisfaction of the PB and the Road Commissioner, that it has financial resources sufficient to comply with subsection 4, below, and the PB may require the Applicant to post a bond or other security in order to ensure such compliance.
4. Any public road damage caused by the Applicant or its contractors shall be promptly repaired at the Applicant's expense.

#### 14.3 Warnings

A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.

#### 14.4 Artificial Habitat

To the extent practicable, the creation of artificial habitat for raptors or raptor prey shall be minimized. In making its determination under this subsection the PB shall consider comments and recommendations, if any, provided by the Maine Department of Inland Fisheries and Wildlife.

#### 14.5 Effect on Scenic Resources

1. Except as otherwise provided in this subsection, if a Type 2 or Type 3 Wind Energy Facility is proposed for location in or is visible from a Scenic Resource, the Applicant shall provide the PB a visual impact assessment that addresses the evaluation criteria in subsection 14.5.3. There is a rebuttable presumption that a visual impact assessment is not required for those portions of a Type 2 or Type 3 Wind Energy Facility that are located more than 3 miles, measured horizontally, from a Scenic Resource. The PB may require a visual impact assessment for portions of the Type 2 or Type 3 Wind Energy Facility located more than 3 miles and up to 8 miles from a Scenic Resource if it finds that a visual impact assessment is needed to determine if there is the potential for significant adverse effects on the Scenic Resource. Information intended to rebut the presumption must be submitted to the PB by any interested Person within 30 days of acceptance of the application as complete. The PB shall determine if the presumption is rebutted based on a preponderance of evidence in the record.

2. The PB shall determine, based on consideration of the evaluation criteria in subsection 14.5.3, whether the Type 2 or 3 Wind Energy Facility significantly compromises views from a Scenic Resource such that the proposed facility has an unreasonable adverse effect on the scenic character or existing uses related to scenic character of that Scenic Resource.
3. In making its determination pursuant to subsection 14.5.2, and in determining whether an Applicant for a Type 2 or 3 Wind Energy Facility located more than 3 miles and up to 8 miles from a Scenic Resource must provide a visual impact assessment in accordance with subsection 14.5.1, the PB shall consider:
  - a. The significance of the potentially affected Scenic Resource;
  - b. The existing character of the surrounding area;
  - c. The expectations of the typical viewer;
  - d. The Type 2 or Type 3 Wind Energy Facility's purpose and the context of the proposed activity;
  - e. The extent, nature and duration of potentially affected public uses of the Scenic Resource and the potential effect on the public's continued use and enjoyment of the Scenic Resource; and
  - f. The scope and scale of the potential effect of views of the Wind Energy Facility on the Scenic Resource, including but not limited to issues related to the number and extent of Wind Turbines visible from the Scenic Resource, the distance from the Scenic Resource and the effect of prominent features of the Wind Energy Facility on the landscape.

A finding by the PB that the Type 2 or Type 3 Wind Energy Facility is a highly visible feature in the landscape is not a solely sufficient basis for determination that it has an unreasonable adverse effect on the scenic character and existing uses related to scenic character of a Scenic Resource. In making its determination under subsection 14.5.2, the PB shall consider insignificant the effects of portions of a Type 2 or Type 3 Wind Energy Facility located more than 8 miles, measured horizontally, from a Scenic Resource.

#### 14.6 Shadow Flicker

Type 2 and Type 3 Wind Energy Facilities shall be designed to avoid unreasonable adverse shadow flicker effect at any Occupied Building located on a Non-Participating Landowner's property.

#### 14.7 Relationship to DEP Certification and Permitting

1. For a Type 2 Wind Energy Facility for which a DEP Certification has been submitted in accordance with section 10.1.14, the PB shall consider, to the extent applicable, pertinent findings in that certification when making its determination under sections

12.1, 14.1, and 14.6. There is a rebuttable presumption that a Wind Energy Facility that has obtained DEP Certification meets the requirements of sections 12.1, 14.1, and 14.6. The PB may, as a condition of approval of a Type 2 Wind Energy Facility that generates energy for sale or use by a person other than the generator, deem DEP's issuance of a certificate for the development sufficient to meet, in whole or in part, as applicable, the requirements of sections 12.1, 14.1, 14.6.

2. If DEP has issued a Site Location of Development Act permit for a Type 3 Wind Energy Facility pursuant to 38 M.R.S. § 484(3), there is a rebuttable presumption that the development meets the requirements of sections 12.1 12.2, 14.1, 14.6, 14.12 and, as it pertains to Scenic Resources of state or national significance as defined by 35-A M.R.S. §3451(9), section 14.5. The PB may, as a condition of approval of a Type 3 Wind Energy Facility, deem DEP's issuance of a permit for the development sufficient to meet, in whole or in part, as applicable, the requirements of sections 12.1, 12.2, 14.1, 14.6, 14.12 and, as it pertains to Scenic Resources of state or national significance, section 14.5.

#### 14.8 Local Emergency Services

1. The Applicant shall provide a copy of the project summary and site plan to local emergency service providers, including paid or volunteer fire department(s).
2. Upon request, the Applicant shall cooperate with emergency service providers to develop and coordinate implementation of an emergency response plan for a Type 2 or Type 3 Wind Energy Facility.
3. A Wind Turbine shall be equipped with an appropriate fire suppression system to address fires within the Nacelle portion of the turbine or shall otherwise address the issue of fire safety to the satisfaction of the PB.

#### 14.9 Liability Insurance

The Applicant or an Applicant's designee acceptable to the PB shall maintain a current general liability policy for the Type 2 or Type 3 Wind Energy Facility that covers bodily injury and property damage with limits in an amount commensurate with the scope and scale of the Facility. The Applicant or its designee shall provide certificates of insurance to the PB.

#### 14.10 Design Safety Certification

Each Wind Turbine shall conform to applicable industry standards including those of the American National Standards Institute (ANSI) and at least one of the following: Underwriters Laboratories, Det Norske Veritas, Germanischer Lloyd Wind Energies, or other similar certifying organization.

#### 14.11 Public Inquiries and Complaints

1. The Applicant or its designee shall maintain a phone number and identify a responsible Person for the public to contact with inquiries and complaints throughout the life of the Wind Energy Facility.
2. The Applicant or its designee shall make reasonable efforts to respond to the public's inquiries and complaints and shall provide written copies of all complaints and the company's resolution or response to the CEO.

#### 14.12 Decommissioning

The Applicant shall prepare a decommissioning plan in conformance with Appendix C.

## APPENDIX A

### Application Fees

Non refundable Application fees shall be paid in full upon submission of the application form. Fees will be assessed according to Wind Energy Facility Type.

Wind Facility Type 1A and 1B      \$25 per tower

Wind Facility Type 2 and 3      \$5.00 per \$1000.00 of estimated construction costs.

Any physical modification to an existing Wind Energy Facility Type 2 or 3 that materially alters the location or increases the area of development on the site or that increases the Turbine Height or the level of sound emissions of any Wind Turbine shall require a permit modification and be subject to fees accordingly.

## **APPENDIX B**

### **Control of Noise**

Pursuant to section 14.1, noise emanating from a Type 2 Wind Energy Facility, a Type 3 Wind Energy Facility, or, upon written request of the Applicant pursuant to section 13.1, a Type 1A or Type 1B Wind Energy Facility, shall be controlled in accordance with the following provisions:

#### **A. Sound Level Limits**

##### **(1) Sound from Routine Operation of Facility.**

(a) Except as noted in subsections (b) and (c) below, the hourly sound levels resulting from routine operation of the facility and measured in accordance with the measurement procedures described in subsection F shall not exceed the following limits:

(i) At any property line of the facility site or contiguous property owned by the Applicant or Participating Land Owner(s), whichever is farther from the proposed facility's regulated sound sources:

75 dBA at any time of day.

(ii) At any Protected Location in an area for which the zoning, or, if unzoned, the existing use or use contemplated under a comprehensive plan, is not predominantly commercial, transportation, or industrial;

60 dBA between 8:00 a.m. and 6:00 p.m.

(the "daytime hourly limit"), and

50 dBA between 6:00 p.m. and 8:00 a.m.

(the "nighttime hourly limit").

(iii) At any Protected Location in an area for which the zoning, or, if unzoned, the existing use or use contemplated under a comprehensive plan, is predominantly commercial, transportation, or industrial:

70 dBA between 8:00 a.m. and 6:00 p.m.

(the "daytime hourly limit"), and

60 dBA between 6:00 p.m. and 8:00 a.m.

(the "nighttime hourly limit").

(iv) For the purpose of determining whether the use of an unzoned area is predominantly commercial, transportation, or industrial (e.g. non-residential in nature), the Codes Enforcement Officer shall consider the municipality's comprehensive plan, if any. Furthermore, the usage of properties abutting each Protected Location shall be determined, and the limits applied for that Protected Location shall be based upon the usage occurring along the greater portion of the perimeter of that parcel; in the event the portions of the perimeter are equal in



usage, the limits applied for that Protected Location shall be those for a Protected Location in an area for which the use is not predominantly commercial, transportation, or industrial.

- (v) When a proposed facility is to be located in an area where the daytime pre-development ambient hourly sound level at a Protected Location is equal to or less than 45 dBA and/or the nighttime pre-development ambient hourly sound level at a Protected Location is equal to or less than 35 dBA, the hourly sound levels resulting from routine operation of the facility and measured in accordance with the measurement procedures described in subsection F shall not exceed the following limits at that Protected Location:

- 55 dBA between 8:00 a.m. and 6:00 p.m.  
(the "daytime hourly limit"), and
  - 45 dBA between 6:00 p.m. and 8:00 a.m.  
(the "nighttime hourly limit").

For the purpose of determining whether a Protected Location has a daytime or nighttime pre-development ambient hourly sound level equal to or less than 45 dBA or 35 dBA, respectively, the Applicant may make sound level measurements in accordance with the procedures in subsection F or may estimate the sound-level based upon the population density and proximity to local highways. If the resident population within a circle of 3,000 feet radius around a Protected Location is greater than 300 persons, or the hourly sound level from highway traffic at a Protected Location is predicted to be greater than 45 dBA in the daytime or 35 dBA at night, then the Applicant may estimate the daytime or nighttime pre-development ambient hourly sound level to be greater than 45 dBA or 35 dBA, respectively.

NOTE: Highway traffic noise can be predicted using the nomograph method of FHWA Highway Traffic Noise Prediction Model, FHWA-RD-77-108, December, 1978.

- (vi) Notwithstanding the above, the Applicant need not measure or estimate the pre-development ambient hourly sound levels at a Protected Location if he demonstrates, by estimate or example, that the hourly sound levels resulting from routine operation of the facility will not exceed 50 dBA in the daytime or 40 dBA at night.
- (b) If the Applicant chooses to demonstrate by measurement that the daytime and/or nighttime pre-development ambient sound environment at any Protected Location near the facility site exceeds the daytime and/or nighttime limits in subsection 1(a)(ii) or 1(a)(iii) by at least 5 dBA, then the daytime and/or nighttime limits shall be 5 dBA less than the measured daytime and/or nighttime pre-development ambient hourly sound level at the location of the measurement for the corresponding time period.
  - (c) For any Protected Location near an existing facility, the hourly sound level limit for routine operation of the existing facility and all future expansions of that facility shall be the applicable hourly sound level limit of 1(a) or 1(b) above, or, at the Applicant's election, the existing hourly sound level from routine operation of the existing facility plus 3 dBA.
  - (d) For the purposes of determining compliance with the above sound level limits, 5 dBA shall be added to the observed levels of any tonal sounds that result from routine operation of the facility.
  - (e) When routine operation of a facility produces short duration repetitive sound, the following limits shall apply:
    - (i) For short duration repetitive sounds, 5 dBA shall be added to the observed levels of the short duration repetitive sounds that result from routine operation of the facility for the purposes of determining compliance with the above sound level limits.

- (ii) For short duration repetitive sounds which the municipal entity responsible for review and approval of a pending application under section 9.1 determines, due to their character and/or duration, are particularly annoying or pose a threat to the health and welfare of nearby neighbors, 5 dBA shall be added to the observed levels of the short duration repetitive sounds that result from routine operation of the facility for the purposes of determining compliance with the above sound level limits, and the maximum sound level of the short duration repetitive sounds shall not exceed the following limits:
  - (a) At any Protected Location in an area for which the zoning, or, if unzoned, the existing use or use contemplated under a comprehensive plan, is not predominantly commercial, transportation, or industrial:

65 dBA between 8:00 a.m. and 6:00 p.m., and  
55 dBA between 6:00 p.m. and 8:00 a.m.
  - (b) At any Protected Location in an area for which the zoning, or, if unzoned, the existing use or use contemplated under a comprehensive plan, is predominantly commercial, transportation, or industrial:

75 dBA between 8:00 a.m. and 6:00 p.m., and  
65 dBA between 6:00 p.m. and 8:00 a.m.
  - (c) The methodology described in subsection 1(a)(iv) shall be used to determine whether the use of an unzoned area is predominantly commercial, transportation, or industrial.
  - (d) If the Applicant chooses to demonstrate by measurement that the pre-development ambient hourly sound level at any Protected Location near the facility site exceeds 60 dBA between 8:00 a.m. and 6:00 p.m., and/or 50 dBA between 6:00 p.m. and 8:00 a.m., then the maximum sound level limit for short duration repetitive sound shall be 5 dBA greater than the measured pre-development ambient hourly sound level at the location of the measurement for the corresponding time period.
  - (e) For any Protected Location near an existing facility, the maximum sound level limit for short duration repetitive sound resulting from routine operation of the existing facility and all future expansions and modifications of that facility shall be the applicable maximum sound level limit of (e)(ii)(a) or (e)(ii)(b) above, or, at the Applicant's election, the existing maximum sound level of the short duration repetitive sound resulting from routine operation of the existing facility plus 3 dBA.

NOTE: The maximum sound level of the short duration repetitive sound shall be measured using the fast response [LAF<sub>max</sub>]. See the definition of maximum sound level.

## (2) Sound from Construction of a Facility

- (a) The sound from construction activities between 6:00 p.m. and 8:00 a.m. is subject to the following limits:
  - (i) Sound from nighttime construction activities shall be subject to the nighttime routine operation sound level limits contained in subsections 1(a) and 1(b).
  - (ii) If construction activities are conducted concurrently with routine operation of the facility, then the combined total of construction and routine operation sound shall be subject to the nighttime routine operation sound level limits contained in subsections 1(a) and 1(b).
  - (iii) Higher levels of nighttime construction sound are permitted when a duly issued permit authorizing nighttime construction sound in excess of these limits has been granted by the Codes Enforcement Officer.

- (b) Sound from construction activities between 8:00 a.m. and 6:00 p.m. shall not exceed the following limits at any Protected Location:

Duration of Activity	Hourly Sound Level Limit
10 hours	87 dBA
8 hours	90 dBA
6 hours	92 dBA
4 hours	95 dBA
3 hours	97 dBA
2 hours	100 dBA
1 hour or less	105 dBA

- (c) All equipment used in construction on the facility site shall comply with applicable federal noise regulations and shall include environmental noise control devices in proper working condition, as originally provided with the equipment by its manufacturer.

**(3) Sound from Maintenance Activities**

- (a) Sound from routine, ongoing maintenance activities shall be considered part of the routine operation of the facility and the combined total of the routine maintenance and operation sound shall be subject to the routine operation sound level limits contained in subsection 1.
- (b) Sound from occasional, major, scheduled overhaul activities shall be subject to the construction sound level limits contained in subsection 2. If overhaul activities are conducted concurrently with routine operation and/or construction activities, the combined total of the overhaul, routine operation and construction sound shall be subject to the construction sound level limits contained in subsection 2.

**B. Submissions**

**(1) Facilities with Minor Sound Impact.**

An Applicant proposing facility with minor sound impact may choose to file, as part of the permit application, a statement attesting to the minor nature of the anticipated sound impact of their facility. An applicant proposing an expansion or modification of an existing facility with minor sound impact may follow the same procedure as described above. For the purpose of this ordinance, a facility or an expansion or modification of an existing facility with minor sound impact means a facility where the Applicant demonstrates, by estimate or example, that the regulated sound from routine operation of the facility will not exceed 5 dBA less than the applicable limits established under Section A. It is the intent of this subsection that an applicant need not conduct sound level measurements to demonstrate that the facility or an expansion or modification of an existing facility will have a minor sound impact.

**(2) Other Facilities**

Technical information shall be submitted describing the Applicant's plan and intent to make adequate provision for the control of noise. The applicant's plan shall contain information such as the following, when appropriate:

- (a) Maps and descriptions of the land uses, local zoning and comprehensive plans for the area potentially affected by sounds from the facility.
- (b) A description of major sound sources, including tonal sound sources and sources of short duration repetitive sounds, associated with the construction, operation and maintenance of the proposed facility, including their locations within the proposed facility.
- (c) A description of the daytime and nighttime hourly sound levels and, for short duration repetitive sounds, the maximum sound levels expected to be produced by these sound sources at Protected Locations near the proposed facility.
- (d) A description of the Protected Locations near the proposed facility.
- (e) A description of proposed major sound control measures, including their locations and expected performance.
- (f) A comparison of the expected sound levels from the proposed facility with the sound level limits of this regulation.

### **C. Terms and Conditions**

The municipal entity responsible for review and approval of the pending application under 9.1 may, as a term or condition of approval, establish any reasonable requirement to ensure that the Applicant has made adequate provision for the control of noise from the facility and to reduce the impact of noise on Protected Locations. Such conditions may include, but are not limited to, enclosing equipment or operations, imposing limits on hours of operation, or requiring the employment of specific design technologies, site design, modes of operation, or traffic patterns.

The sound level limits prescribed in this ordinance shall not preclude the municipal entity responsible for review and approval of the pending application under 9.1 from requiring an Applicant to demonstrate that sound levels from a facility will not unreasonably disturb wildlife or adversely affect wildlife populations in accordance with 12.2. In addition, the sound level limits shall not preclude the municipal entity responsible for review and approval of the pending application under 9.1, as a term or condition of approval, from requiring that lower sound level limits be met to ensure that the Applicant has made adequate provision for the protection of wildlife.

### **D. Waiver from Sound Level Limits**

[Name of municipality] recognizes that there are certain facilities or activities associated with facilities for which noise control measures are not reasonably available. Therefore, the municipal entity responsible for review and approval of the pending application under section 9.1 may grant a waiver from any of the sound level limits contained in this ordinance upon (1) a showing by the Applicant that he or she has made a comprehensive assessment of the available technologies for the facility and that the sound level limits cannot practicably be met with any of these available technologies, and (2) a finding by the municipal entity responsible for review and approval of the pending application under section 9.1 that the proposed facility will not have an unreasonable impact on Protected Locations. In addition, a waiver may be granted by the municipal entity responsible for review and approval of the pending application under section 9.1 if (1) a facility is deemed necessary in the interest of national defense or public safety and the Applicant has shown that the sound level limits cannot practicably be met without unduly limiting the facility's intended function, and (2) a finding is made by the municipal entity responsible for review and approval of the pending application under section 9.1 that the proposed facility will not have an unreasonable impact on Protected Locations. The municipal entity responsible for review and approval of the pending application under section 9.1 shall consider the request for a waiver as part of the review of a completed permit application. In granting a waiver, the municipal entity responsible for review and

approval of the pending application under section 9.1 may, as a condition of approval, impose terms and conditions to ensure that no unreasonable sound impacts will occur.

## E. Definitions

Terms used herein are defined below for the purpose of this noise regulation.

- (1) **AMBIENT SOUND:** At a specified time, the all-encompassing sound associated with a given environment, being usually a composite of sounds from many sources at many directions, near and far, including the specific facility of interest.
- (2) **CONSTRUCTION:** Activity and operations associated with the facility or expansion of the facility or its site.
- (3) **EMERGENCY:** An unforeseen combination of circumstances which calls for immediate action.
- (4) **EMERGENCY MAINTENANCE AND REPAIRS:** Work done in response to an emergency.
- (5) **ENERGY SUM OF A SERIES OF LEVELS:** Ten times the logarithm of the arithmetic sum of the antilogarithms of one-tenth of the levels. [Note: See Section F(4.2).]
- (6) **EXISTING FACILITY:** A Wind Energy Facility legally constructed before the effective date of this ordinance or a proposed Wind Energy Facility for which the Application is found complete on or before the effective date of this ordinance. Any facility with an approved permit application which has been remanded to the municipal entity responsible for review and approval of the application under 9.1 by a court of competent jurisdiction for further proceedings relating to noise limits or noise levels prior to the effective date of this ordinance shall not be deemed an existing facility and the ordinance shall apply to the existing noise sources at that facility.
- (7) **EXISTING HOURLY SOUND LEVEL:** The hourly sound level resulting from routine operation of an existing facility prior to the first expansion that is subject to this ordinance.
- (8) **EQUIVALENT SOUND LEVEL:** The level of the mean-square A-weighted sound pressure during a stated time period, or equivalently the level of the sound exposure during a stated time period divided by the duration of the period. (NOTE: For convenience, a one hour equivalent sound level should begin approximately on the hour.)
- (9) **HISTORIC AREAS:** Historic sites administered by the Bureau of Parks and Lands of the Maine Department of Conservation, with the exception of the Arnold Trail.
- (10) **HOURLY SOUND LEVEL:** The equivalent sound level for one hour measured or computed in accordance with this ordinance.
- (11) **LOCALLY-DESIGNATED PASSIVE RECREATION AREA:** Any site or area designated by [*name of municipality*] for passive recreation that is open and maintained for public use and which:
  - (a) has fixed boundaries,
  - (b) is owned in fee simple by the Town of Appleton or is accessible by virtue of public easement,
  - (c) is identified and described in the Town of Appleton comprehensive plan, and
  - (d) has been identified and designated at least nine months prior to submission of the Applicant's Wind Energy Facility permit application.
- (12) **MAXIMUM SOUND LEVEL:** Ten times the common logarithm of the square of the ratio of the maximum sound to the reference sound of 20 micropascals. Symbol: LAFmax.

- (13) **MAXIMUM SOUND:** Largest A-weighted and fast exponential-time-weighted sound during a specified time interval. Unit: pascal (Pa).
- (14) **RESIDENCE:** A building or structure, including manufactured housing, maintained for permanent or seasonal residential occupancy providing living, cooking and sleeping facilities and having permanent indoor or outdoor sanitary facilities, excluding recreational vehicles, tents and watercraft.
- (15) **PRE-DEVELOPMENT AMBIENT:** The ambient sound at a specified location in the vicinity of a facility site prior to the construction and operation of the proposed facility or expansion.
- (16) **PROTECTED LOCATION:** any location that is:

1) accessible by foot, on a parcel of land owned by a Non-Participating Landowner containing a Residence or planned Residence, or an approved residential subdivision, house of worship, academic school, college, library, duly licensed hospital or nursing home near the facility site at the time an application for a Wind Energy Facility permit is submitted under this ordinance; or

2) a nature preserve owned by a land trust, the Maine Audubon Society or the Maine chapter of the Nature Conservancy, a federally designated wilderness area, a state wilderness area designated by statute, a municipal park or a locally-designated passive recreation area, or any location within consolidated public reserve lands designated by rule by the Bureau of Public Lands as a Protected Location.

At Protected Locations more than 500 feet from living and sleeping quarters within the above noted buildings or areas, the daytime hourly sound level limits shall apply regardless of the time of day.

Houses of worship, academic schools, libraries, State and National Parks without camping areas, Historic Areas, nature preserves, federally-designated wilderness areas without camping areas, state wilderness areas designated by statute without camping areas, and locally-designated passive recreation areas without camping areas are considered protected locations only during their regular hours of operation.

All hotels, motels and duly licensed campgrounds are considered protected locations.

This term does not include buildings and structures located on leased camp lots, owned by the Applicant used for seasonal purposes.

For purposes of this definition, (1) a Residence is considered planned when the owner of the parcel of land on which the Residence is to be located has received all applicable building and land use permits and the time for beginning construction under such permits has not expired, and (2) a residential subdivision is considered approved when the developer has received all applicable land use permits for the subdivision and the time for beginning construction under such permits has not expired.

- (17) **ROUTINE OPERATION:** Regular and recurrent operation of regulated sound sources associated with the purpose of the facility and operating on the facility site.
- (18) **SHORT DURATION REPETITIVE SOUNDS:** A sequence of repetitive sounds which occur more than once within an hour, each clearly discernible as an event and causing an increase in the sound level of at least 6 dBA on the fast meter response above the sound level observed immediately before and after the event, each typically less than ten seconds in duration, and which are inherent to the process or operation of the facility and are foreseeable.
- (19) **SOUND COMPONENT:** The measurable sound from an audibly identifiable source or group of sources.
- (20) **SOUND LEVEL:** Ten times the common logarithm of the square of the ratio of the frequency-weighted and time-exponentially averaged sound pressure to the reference sound of 20 micropascals. For the purpose of this ordinance, sound level measurements are obtained using the A-weighted frequency response and fast dynamic response of the measuring system, unless otherwise noted.

- (22) **SOUND PRESSURE:** Root-mean-square of the instantaneous sound pressures in a stated frequency band and during a specified time interval. Unit: pascal (Pa).
- (23) **SOUND PRESSURE LEVEL:** Ten times the common logarithm of the square of the ratio of the sound pressure to the reference sound pressure of 20 micropascals.
- (24) **TONAL SOUND:** for the purpose of this ordinance, a tonal sound exists if, at a Protected Location, the one-third octave band sound pressure level in the band containing the tonal sound exceeds the arithmetic average of the sound pressure levels of the two contiguous one-third octave bands by 5 dB for center frequencies at or between 500 Hz and 10,000 Hz, by 8 dB for center frequencies at or between 160 and 400 Hz, and by 15 dB for center frequencies at or between 25 Hz and 125 Hz.

Additional acoustical terms used in work associated with this ordinance shall be used in accordance with the following American National Standards Institute (ANSI) standards:

ANSI S12.9-1988 - American National Standard Quantities and Procedures for Description and Measurements of Environmental Sound, Part 1;

ANSI S3.20-1973 - American National Standard Psychoacoustical Terminology;

ANSI S1.1-1960 - American National Standard Acoustical Terminology.

## **F. Measurement Procedures**

- (1) **Scope.** These procedures specify measurement criteria and methodology for use, with applications, compliance testing and enforcement. They provide methods for measuring the ambient sound and the sound from routine operation of the facility, and define the information to be reported. The same methods shall be used for measuring the sound of construction and maintenance activities.

### **(2) Measurement Criteria**

#### **2.1 Measurement Personnel**

Measurements shall be supervised by personnel who are well qualified by training and experience in measurement and evaluation of environmental sound, or by personnel trained to operate under a specific measurement plan approved by the municipal entity responsible for review and approval of the pending application under 9.1.

#### **2.2 Measurement Instrumentation**

- (a) A sound level meter or alternative sound level measurement system used shall meet all of the Type 1 or 2 performance requirements of American National Standard Specifications for Sound Level Meters, ANSI S1.4-1983.
- (b) An integrating sound level meter (or measurement system) shall also meet the Type 1 or 2 performance requirements for integrating/averaging in the International Electrotechnical Commission Standard on Integrating-Averaging Sound Level Meters, IEC Publication 804 (1985).
- (c) A filter for determining the existence of tonal sounds shall meet all the requirements of American National Standard Specification for Octave-Band and Fractional Octave-Band Analog and Digital Filters, ANSI S1.11-1986 for Order 3, Type 3-D performance.
- (d) An acoustical calibrator shall be used of a type recommended by the manufacturer of the sound level meter and that meets the requirements of American National Standard Specification for Acoustical Calibrators, ANSI S1.40-1984.

- (e) A microphone windscreen shall be used of a type recommended by the manufacturer of the sound level meter.

### 2.3 Calibration

- (a) The sound level meter shall have been calibrated by a laboratory within 12 months of the measurement, and the microphone's response shall be traceable to the National Bureau of Standards.
- (b) Field calibrations shall be recorded before and after each measurement period and at shorter intervals if recommended by the manufacturer.

### 2.4 Measurement Location, Configuration and Environment

- (a) Except as noted in subsection (b) below, measurement locations shall be at nearby Protected Locations that are most likely affected by the sound from routine operation of the facility.
- (b) For determining compliance with the 75 dBA property line hourly sound level limit described in subsection A(1)(a)(i), measurement locations shall be selected at the property lines of the proposed facility or contiguous property owned by the Applicant, as appropriate.
- (c) The microphone shall be positioned at a height of approximately 4 to 5 feet above the ground, and oriented in accordance with the manufacturer's recommendations.
- (d) Measurement locations should be selected so that no vertical reflective surface exceeding the microphone height is located within 30 feet. When this is not possible, the measurement location may be closer than 30 feet to the reflective surface, but under no circumstances shall it be closer than 6 feet.
- (e) When possible, measurement locations should be at least 50 feet from any regulated sound source on the facility.
- (f) Measurement periods shall be avoided when the local wind speed exceeds 12 mph and/or precipitation would affect the measurement results.

2.5 Measurement Plans. Plans for measurement of pre-development ambient sound or post-facility sound may be discussed with the Codes Enforcement Officer.

## (3) Measurement of Ambient Sound

### 3.1 Pre-development Ambient Sound

Measurements of the pre-development ambient sound are required only when the Applicant elects to establish the sound level limit in accordance with subsections A(1)(b) and A(1)(e)(ii)(d) for a facility in an area with high ambient sound levels, such as near highways, airports, or pre-existing facilities; or when the Applicant elects to establish that the daytime and nighttime ambient hourly sound levels at representative Protected Locations exceed 45 dBA and 35 dBA, respectively.

- (a) Measurements shall be made at representative Protected Locations for periods of time sufficient to adequately characterize the ambient sound. At a minimum, measurements shall be made on three different weekdays (Monday through Friday) during all hours that the facility will operate. If the proposed facility will operate on Saturdays and/or Sundays, measurements shall also be made during all hours that the facility will operate.
- (b) Measurement periods with particularly high ambient sounds, such as during holiday traffic activity, significant insect activity or high coastline waves, should generally be avoided.



- (c) At any measurement location the daytime and nighttime ambient hourly sound level shall be computed by arithmetically averaging the daytime and nighttime values of the measured one hour equivalent sound levels. Multiple values, if they exist, for any specific hour on any specific day shall first be averaged before the computation described above.

### 3.2 Post-Facility Ambient Sound

- (a) Measurements of the post-facility ambient one hour equivalent sound levels and, if short duration repetitive sounds are produced by the facility, the maximum sound levels made at nearby Protected Locations and during representative routine operation of the facility that are not greater than the applicable limits of subsection C clearly indicate compliance with those limits.
- (b) Compliance with the limits of subsection A(l)(b) may also be demonstrated by showing that the post-facility ambient hourly sound level, measured in accordance with the procedures of subsection 3.1 above during routine operation of the facility, does not exceed the pre-development ambient hourly sound level by more than one decibel, and that the sound from routine operation of the facility is not characterized by either tonal sounds or short duration repetitive sounds.
- (c) Compliance with the limits of subsection A(1)(e)(ii)(d) may also be demonstrated by showing that the post facility maximum sound level of any short duration repetitive sound, measured in accordance with the procedures of subsection 3.1 above, during routine operation of the facility, does not exceed the pre-development ambient hourly sound level by more than five decibels.
- (d) .If any of the conditions in (a), (b) or (c) above are not met, compliance with respect to the applicable limits must be determined by measuring the sound from routine operation of the facility in accordance with the procedures described in subsection 4.

## (4) Measurement of the Sound from Routine Operation of Facility.

### 4.1 General

- (a) Measurements of the sound from routine operation of facilities are generally necessary only for specific compliance testing purposes in the event that community complaints result from operation of the facility, for validation of an Applicant's calculated sound levels when requested by the municipal entity responsible for review and approval of the pending application under 9.1, for determination of existing hourly sound levels for an existing facility or for enforcement by the Codes Enforcement Officer.
- (b) Measurements shall be obtained during representative weather conditions when the facility sound is most clearly noticeable. Preferable weather conditions for sound measurements at distances greater than about 500 feet from the sound source include overcast days when the measurement location is downwind of the facility and inversion periods (which most commonly occur at night).
- (c) Measurements of the facility sound shall be made so as to exclude the contribution of sound from facility equipment that is exempt from this regulation.

### 4.2 Measurement of the Sound Levels Resulting from Routine Operation of the Facility.

- (a) When the ambient sound levels are greater than the sound level limits, additional measurements can be used to determine the hourly sound level that results from routine operation of the facility. These additional measurements may include diagnostic measurements such as measurements made close to the facility and extrapolated to the Protected Location, special checkmark measurement techniques that include the separate identification of audible sound sources, or the use of sound level meters with pause capabilities that allow the operator to exclude non-facility sounds.
- (b) For the purposes of computing the hourly sound level resulting from routine operation of the facility, sample diagnostic measurements may be made to obtain the one hour equivalent sound levels for each sound component.

- (c) Identification of tonal sounds produced by the routine operation of a facility for the purpose of adding the 5 dBA penalty in accordance with subsection A(l)(d) requires aural perception by the measurer, followed by use of one-third octave band spectrum analysis instrumentation. If one or more of the sounds of routine operation of the facility are found to be tonal sounds, the hourly sound level component for tonal sounds shall be computed by adding 5 dBA to the one hour equivalent sound level for those sounds.
  - (d) Identification of short duration repetitive sounds produced by routine operation of a facility requires careful observations. For the sound to be classified as short duration repetitive sound, the source(s) must be inherent to the process or operation of the facility and not the result of an unforeseeable occurrence. If one or more of the sounds of routine operation of the facility are found to be short duration repetitive sounds, the hourly sound level component for short duration repetitive sounds shall be computed by adding 5 dBA to the one hour equivalent sound level for those sounds. If required, the maximum sound levels of short duration repetitive sounds shall be measured using the fast response [LAFmax]. The duration and the frequency of occurrence of the events shall also be measured. In some cases, the sound exposure levels of the events may be measured. The one hour equivalent sound level of a short duration repetitive sound may be determined from measurements of the maximum sound level during the events, the duration and frequency of occurrence of the events, and their sound exposure levels.
  - (e) The daytime or nighttime hourly sound level resulting from routine operation of a facility is the energy sum of the hourly sound level components from the facility, including appropriate penalties, (see (c) and (d) above). If the energy sum does not exceed the appropriate daytime or nighttime sound level limit, then the facility is in compliance with that sound level limit at that Protected Location.
- (5) Reporting Sound Measurement Data. The sound measurement data report should include the following:
- (a) The dates, days of the week and hours of the day when measurements were made.
  - (b) The wind direction and speed, temperature, humidity and sky condition.
  - (c) Identification of all measurement equipment by make, model and serial number.
  - (d) The most recent dates of laboratory calibration of sound level measuring equipment.
  - (e) The dates, times and results of all field calibrations during the measurements.
  - (f) The applicable sound level limits, together with the appropriate hourly sound levels and the measurement data from which they were computed, including data relevant to either tonal or short duration repetitive sounds.
  - (g) A sketch of the site, not necessarily to scale, orienting the facility, the measurement locations, topographic features and relevant distances, and containing sufficient information for another investigator to repeat the measurements under similar conditions.
  - (h) A description of the sound from the facility and the existing environment by character and location.

## **APPENDIX C**

### **Decommissioning Plan**

Pursuant to section 14.12, the Applicant shall provide a plan for decommissioning a Type 2 or Type 3 Wind Energy Facility. The decommissioning plan shall include, but shall not be limited to the following:

1. A description of the trigger for implementing the decommissioning plan. There is a rebuttable presumption that decommissioning is required if no electricity is generated for a continuous period of twelve (12) months. The Applicant may rebut the presumption by providing evidence, such as a force of nature event that interrupts the generation of electricity, that although the project has not generated electricity for a continuous period of 12 months, the project has not been abandoned and should not be decommissioned.
2. A description of the work required to physically remove all Wind Turbines, associated foundations to a depth of 24 inches, buildings, cabling, electrical components, and any other Associated Facilities to the extent they are not otherwise in or proposed to be placed into productive use. All earth disturbed during decommissioning must be graded and re-seeded, unless the landowner of the affected land requests otherwise in writing.

[Note: At the time of decommissioning, the Applicant may provide evidence of plans for continued beneficial use of any or all of the components of the Wind Energy Facility. Any changes to the approved decommissioning plan shall be subject to review and approval by the CEO and PB.

3. An estimate of the total cost of decommissioning less salvage value of the equipment and itemization of the estimated major expenses, including the projected costs of measures taken to minimize or prevent adverse effects on the environment during implementation of the decommissioning plan. The itemization of major costs may include, but is not limited to, the cost of the following activities: turbine removal, turbine foundation removal and permanent stabilization, building removal and permanent stabilization, transmission corridor removal and permanent stabilization and road infrastructure removal and permanent stabilization.
4. Demonstration in the form of a performance bond, surety bond, letter of credit, parental guarantee or other form of financial assurance as may be acceptable to the PB that upon the end of the useful life of the Wind Energy Facility the Applicant will have the necessary financial assurance in place for 100% of the total cost of decommissioning, less salvage value. The Applicant may propose securing the necessary financial assurance in phases, as long as the total required financial assurance is in place a minimum of 5 years prior to the expected end of the useful life of the Wind Energy Facility.