

2018

Town of Berwick Maine Ordinances

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TOWN OF BERWICK
ADDRESSING ORDINANCE

Section 1. Purpose

The purpose of this Ordinance is to create a unique physical address for all properties, and to enhance the easy and rapid location of properties, structures, dwellings, or apartments, by law enforcement, fire, rescue, and emergency medical service personnel in the Town of Berwick.

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 30A M.R.S.A. Section 3001.

Section 3. Administration

The Ordinance shall be administered by the Board of Selectmen, or its designee, which is authorized to and shall assign road names and numbers to all properties, both on existing and proposed roads, in accordance with the criteria in Sections 4 & 5. The Board of Selectmen or its designee shall also be responsible for maintaining official records of this Ordinance.

Section 4. Naming System

All roads that serve two or more properties shall be named regardless of whether the ownership is public or private. A "road" refers to any highway, road, street, avenue, lane, private way, or similar paved, gravel, or dirt thoroughfare. "Property" refers to any property on which a more or less permanent structure has been erected or could be placed. A road name assigned in accordance with Section 2 shall not constitute or imply acceptance of the road as a public way.

The following criteria shall govern the naming system:

- a. Whenever possible, no two roads shall be given the same name (e.g., Pine Road and Pine Lane).
- b. Whenever possible, no two roads shall have similar-sounding names (e.g., Beech Street and Peach Street).
- c. Whenever possible, each road shall have the same name throughout its entire length. Similarly, any extensions current or future shall be named the same, eliminating the "extension",etc.
- d. Any identifying road sign can only be used for road names accepted by the Board of Selectmen or their designee. Unauthorized signs cannot be posted as this could provide incorrect location information to emergency services. Single dwelling or single lot access driveways shall not be named.

Section 5. Numbering System

Numbers shall be assigned every 50 (fifty) feet along both sides of the road in the Urban Districts and 100 feet along both sides of the road in the rural Districts, with the even numbers appearing on the right side of the road and odd numbers appearing on the left side of the road, determined by the number origin. (The frontage interval may vary in more densely or lightly populated areas, and it should be so indicated in official records, where that particular interval applies.)

The following criteria shall govern the numbering system:

- a. All number origins shall begin from the designated center of Berwick (Sullivan Square) or that end of the road closest to the designated center. For dead end roads, numbering shall originate at the intersection of the adjacent road and terminate at the dead end.
- b. The number assigned to each structure shall be that of the numbered interval falling closest to the front door. If the front door cannot be seen from the main road, the number shall be that of the interval falling closest to the driveway of said structure.
- c. Multiple businesses or dwelling units within one building will be identified with one number and multiple lettering (312 School Street Apartment A and Apartment B or 312 School Street Suite A and Suite B). This includes duplexes, apartments, shared structure for businesses etc.

Section 6. Compliance

All owners of structures shall, in accordance with Section 8, display and maintain in a conspicuous place on said structure, the assigned numbers in the following manner:

- a. Number on the Structure of Residence. Where the residence or structure is within 50 (fifty) feet of the edge of the road right-of-way, the assigned number shall be displayed on the front of the residence or structure near the front door or entry.
- b. Number at the Street Line. Where the residence or structure is over 50 (fifty) feet from the edge of the road right-of-way, the assigned number shall be displayed on a post, fence, wall, the mail box, or on some structure at the property line next to the walk or access drive to the residence or structure.
- c. Size and Color of Number. Numbers shall be displayed in a color and size approved for use by the Board of Selectmen and shall be located to be visible from the road. A Minimum size of 4" reflective numbers must be used in a contrasting color to the color of the surface applied to.

d. Every person whose duty it is to display the assigned number shall remove any different number that might be mistaken for, or confused with, the number assigned in conformance with this Ordinance.

e. Interior location. All residents and other occupants are strongly encouraged to post the assigned number and road name next to their telephone for emergency reference.

Section 7. New Construction and Subdivisions

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

a. New Construction. Whenever any residence or other structure is constructed or developed, it shall be the duty of the new owner to obtain an assigned number from the Board of Selectmen or its designee. This shall be done at the time of the issuance of a Land Use Permit.

b. New Subdivisions. Any prospective subdivider shall show a proposed road name and lot numbering system on the application submitted to the Planning Board. Approval by the Planning Board, after consultation with the Board of Selectmen or its designee, shall constitute the assignment of road names and numbers to the lots in the subdivision. On the final plan showing proposed roads, the applicant shall mark on the plan, lines or dots, in the center of the streets every 50(fifty) feet if located in the Urban Districts, and every 100 feet if located in the Rural Districts, to aid in assignment of numbers to structures subsequently constructed.

Section 8. Effective Date

This Ordinance shall become effective for the purposes of its implementation on the date of its enactment. It shall become fully effective only after all of its provisions have been fulfilled including notification to each property owner and the Post Office by mail as to each new address. It shall be the duty of each property owner to comply with the provisions of this Ordinance, including the posting of new property numbers, within thirty (30) days following notification.

Section 9. Enforcement

Residents not complying with this Ordinance may experience a delay with the arrival of responding emergency services and are subject to the penalty provisions below. The Berwick Police Department shall be responsible for enforcing this Ordinance. Any person who, after being notified of a violation of this Ordinance by the Berwick Police Department and being ordered to correct the violation, fails to comply with any of the provisions of this Ordinance within fifteen (15) days of receipt of written notice shall be punished by a fine of not more than \$100 plus costs, which fine shall be recovered on complaint for the use of the Town.

Enacted: Annual Town Meeting June 10, 1997

Amended: Annual Town Meeting May 13, 2003

*Adopted
May 16, 2001*

TOWN OF BERWICK
ANIMAL CONTROL ORDINANCE

1.1 DOGS NOT TO RUN AT LARGE

It is unlawful for any dog, licensed or unlicensed, to be at large, except when used for hunting as defined in state law (7 MRSA 3907 & 3911.) Any dog off the property of its owner or keeper must be under control either by a leash or by verbal control and personal presence. Any dog found in violation shall be seized as described in state law (7 MRSA 3912 et seq.). The procedure for stray dogs shall be as described in state law (7 MRSA 3913).

1.2 IMPOUND FEES

The owner (s) of any dog may reclaim the dog(s) upon payment of the following:

A. The municipal impound and transport fees provided that the dog has been properly licensed. A receipt for payment of Municipal fees must be presented to the animal shelter prior to the release of the dog.

B. The Municipal impound fee shall be consistent with prevailing kennel rates and shall be established by the Board of Selectmen. The Municipal transport fee shall reflect the cost of transporting the dog to the shelter or veterinarian and shall be established by the Board of Selectmen.

1.3 LICENSE REQUIRED

No dog may be kept within the limits of the Town of Berwick unless the dog has been licensed as prescribed by state law (7 MRSA 3921 et seq.). License fees and late charges shall be as prescribed by state law (7 MRSA 3923A) as may be amended from time to time.

1.4 DOGS CREATING A NUISANCE

Any owner or keeper of a dog which creates a nuisance as defined herein shall be held liable for the actions of, or any damage done by, the dog. A nuisance shall include instances of any of the following which shall be deemed to be a violation of this Ordinance.

A. Excessive Noise. Any dog which barks, howls or makes other unreasonable noise continuously for twenty (20) minutes or intermittently for one (1) hour shall be deemed to constitute a nuisance.

B. Property Damage. The digging or trampling of gardens, flower beds etc. by any dog shall be deemed to constitute a nuisance. (See 7 MRSA 3961 for private remedies for damages)

C. Litter. The tearing open or overturning of trash receptacles shall be deemed to constitute a nuisance.

D. Excrement. The accumulation of dog excrement so as to cause an offensive odor and/or a health or safety hazard shall be deemed to constitute a nuisance.

E. Chasing. The chasing of automobiles, motorcycles or bicycles shall be deemed to constitute a nuisance.

F. Menacing. The menacing of livestock, other animals or persons shall be deemed to constitute a nuisance.

1.5 DANGEROUS DOGS

Dogs of a dangerous or vicious temperament shall be securely confined or tied by the owner or keeper in a reasonable and humane manner to prevent harm to the public, the dog or other animals. The procedures for dealing with dangerous dogs shall be governed by state law (7 MRSA 3951 et seq.).

1.6 DOGS THAT HAVE BITTEN PERSONS

The owner of a dog who knows or has been advised that the dog has bitten a person shall notify the Animal Control Officer or a Police Officer immediately and shall produce evidence of a rabies vaccination on demand. Said owner shall confine said dog to the property of its owner for a period of ten (10) days. If proof of rabies vaccination is not available or known or if the owner of the dog is not known, the dog shall be confined at an animal shelter or veterinarian's in accordance with applicable state law (See Department of Human Services Rules, Chapter 251 Rules Governing Rabies Management. See also 22 MRSA 1313, 1313A and 1313B). Any expenses incurred by the Town of Berwick shall be the responsibility of the owner of the dog and shall be paid by that person.

1.7 DOGS IN HEAT

The owner/keeper of a female dog in season (heat) shall confine the dog indoors or in a secure enclosure, except when being exercised on a leash or otherwise under the control of a responsible adult. The enclosure must be of suitable size and strength to prevent escape and to prevent a male dog from having access to such female except for controlled breeding purposes as may be permitted by the owner of the female. Additionally, the female dog shall not be chained or tethered in a manner that prevents her from defending herself or from avoiding a male dog.

1.8 VIOLATIONS

Any person found in violation of any provision of this Ordinance shall be assessed penalties as provided by state law. When state law does not provide a penalty, violations of this Ordinance shall be subject to a fine of not less than \$50 nor more than \$200 for each offense. It is the intent of this Ordinance that the stricter provision be applied for any offense covered by both state law and by this Ordinance. All fines for any violations of the Animal Control Ordinance shall be paid to the appropriate jurisdiction.

1.9 SEVERABILITY CLAUSE

If any part of this Ordinance shall be held to be invalid, such part shall be deemed severable and the invalidity thereof shall not affect the remainder of this Ordinance.

1.10 EFFECTIVE DATE

This Ordinance shall take effect upon its adoption by the voters at an Annual Town Meeting.

CERTIFICATION OF PROPOSED ORDINANCE
(30-A MRSA 3002)

We, the undersigned Municipal Officers of the Town of Berwick hereby certify to the Municipal Clerk of the Town of Berwick that the Ordinance entitled Town of Berwick Animal Control Ordinance attached hereto is a true copy of the proposed Ordinance to be acted upon at the Town Meeting (Open) to be held on May 16, 2001 in Berwick.

Dated this 17th day of April, 2001
at Berwick, Maine.

Russell B. [Signature]
Margaret G. Wheeler
Bruce W. [Signature]
Eleanor [Signature]
Wayne Clement
A Majority of the Board of
Selectmen of the Town of Berwick

A True Copy: ATTEST

Town Clerk of Berwick, Maine

Adopted 5/16/01

TOWN OF BERWICK BEDBUG TREATMENT ORDINANCE

1. Authority

This ordinance is enacted under Town of Berwick's home rule land use ordinance enactment authority pursuant to 30-A M.R.S. Section 3001. Penalties established hereunder are established on the basis of authority granted to the Town by 30-A M.R.S. Section 4452 and in accordance with 30-A M.R.S. Section 3001(4).

2. Purpose

The purpose of this ordinance is to protect the health and welfare by providing duly appointed Berwick Land Use Code Enforcement Officer(s) authority to ensure bedbug infestation complaints and/or verifications are eliminated expeditiously.

3. Application

The provisions of this ordinance apply to Complaints about Bedbug Infestations in Apartments which are subject to the control of Landlords.

4. Definitions

"Town" refers to Town of Berwick.

"Tenant" refers to an individual or individuals possessing or occupying an apartment whether under a lease or at will.

"Dwelling Unit" refers to singular units used for residential tenancy.

"Apartment" refers to both a structure consisting of multiple (more than one) dwelling units, and/or singular dwelling units, which are used for residential tenancy.

"Landlord" refers to the owner, whether an individual or an entity, of an apartment or apartments.

"Pest Control Agent" means a commercial applicator of pesticides who or which carries current liability insurance and who or which is certified pursuant to 22 M.R.S. Section 1471-D, as that statutory section may be amended from time to time.

"Bedbug" means the common bedbug species *Cimex lectularius* as well as any related *Cimex* species.

"Infestation" means the presence of any live bedbug within any Apartment.

"Complaint" means a verbal or written concern about Bedbug Infestation addressed to the Town of Berwick's Land Use Code Enforcement Officer, or the observation and verification of a Bedbug Infestation by the Land Use Code Enforcement Officer directly.

“Reasonable Measures” refers to any measure recommended to a Landlord for the treatment of a Bedbug Infestation by a Pest Control Agent following an inspection of an Apartment for such purpose.

“Bedbug Treatment” refers to a Landlord’s implementation of a Reasonable Measure.

5. Requirements

Landlords. Landlords have the following duties under this Ordinance:

- A. Upon written notice from a Town Land Use Code Enforcement Officer that an Apartment may have a Bedbug Infestation, any Landlord to whom control of such Apartment is subject shall within five days conduct an inspection of the unit to verify the alleged Infestation and shall within ten days notify a Town Land Use Code Enforcement Officer of his/her/its findings.
- B. Upon determination by a Landlord or Land Use Code Enforcement Officer that an Infestation of Bedbugs does in fact exist in an Apartment subject to the Landlord’s control, a Landlord shall within ten days arrange for a Pest Control Agent to inspect an Apartment and make written recommendation(s) for Reasonable Measures to eliminate any Bedbug Infestation verified, or otherwise to certify in writing that no Infestation exists.
- C. Following receipt of the Reasonable Measures recommended arising under paragraph B of this section, if any, a Landlord shall take steps to implement his/her/its choice of those Reasonable Measures to effectively treat the Bedbug Infestation in order to cause the Infestation to cease.

~~A Landlord shall notify the Town’s Land Use Code Enforcement Officer(s), in writing, of which Reasonable Measure he/she/it has selected from those recommended within five business days of receiving the recommendations.~~

A Landlord shall within 30 calendar days implement such Reasonable Measure in accordance with subsection E, below, and certify to the Town’s Land Use Code Enforcement Officer in writing that the Infestation has ceased.

- D. Landlords may not offer for rent an Apartment or Dwelling Unit they know or suspects is Infested with Bedbugs.
- E. Landlord obligations under this Ordinance are unaffected where Tenants are unable to comply with Apartment or Dwelling Unit preparations necessary for Bedbug inspection or Bedbug Treatment under subsection 5 paragraph C of this section.

In such cases, Landlords shall comply with this Ordinance in accordance with the provisions for assisting such Tenants prescribed by applicable State law at 14 M.R.S. Section 6021-A, or as otherwise determined directly through agreement with the Tenant.

This paragraph may not be construed to require Landlords to provide Tenants with alternate lodging or to pay to replace Tenants' personal property.

Tenants. Tenants have the following duties under this Ordinance.

- A. Tenants shall promptly notify Landlords, in writing, when they know of or suspect a Bedbug Infestation in a Tenant's Apartment or Dwelling Unit.
- B. Upon receiving reasonable notice of at least 24 hours, including reasons for and scope of the request for access to the premises, Tenants shall grant the landlord of an Apartment or Dwelling Unit, or a Landlord's agent or Pest Control Agent and its employees, access to Apartments and/or Dwelling Units controlled by Tenants for the purpose of an inspection for or control of the Infestation of Bedbugs.

Initial inspection may include only a visual inspection and manual inspection of the Tenant's bedding and upholstered furniture. Employees of the Pest Control Agent may inspect items other than bedding and upholstered furniture when such an inspection is considered reasonable by the Pest Control Agent. If the Pest Control Agent finds bedbugs in an Apartment or Dwelling Unit or in an adjoining Dwelling Unit, the Pest Control Agent may have additional access to the Tenant's personal belongings as determined reasonable by the Pest Control Agent.

- C. Upon receiving reasonable notice as set forth above, Tenants shall comply with the Reasonable Measures to eliminate and control a Bedbug Infestation. Tenant's shall not unreasonably refuse to or fail to completely comply with the Pest Control Agent's Reasonable Measures as selected by a Landlord.

6. Enforcement

Any Town Land Use Code Enforcement Officer, duly appointed by the Municipal Officers, has jurisdiction to administer and enforce the terms of this ordinance locally, and outstanding violations are also subject to authorized enforcement action(s) in District Court pursuant to Rule 80(K) of the Maine Rules of Civil Procedure.

Violations of this Ordinance shall be treated in the following manner.

- A. A Land Use Code Enforcement Officer will issue, in writing, a Notice of Violation & Order to Correct, notifying a Landlord of the violation, the Landlord's obligations under this Ordinance, steps required to remedy the situation, including a reasonable timeline for doing so, potential penalties for not doing so within the specified time,

and of the right to appeal the Land Use Code Enforcement Officer's interpretation of this Ordinance to the Berwick Board of Appeals. Two copies of this notice shall be sent to the Landlord, one via regular mail and one via certified mail with return receipt requested. Each shall be mailed to the Landlord's current address of record on file in the Assessors' Agent's files.

- B. If the noted violation persists beyond the timeframe specified in the Notice of Violation & Order to Correct specified in section A, above, the Town Land Use Code Enforcement Officer shall subsequently mail, by the same methods prescribed in section A, above, a Notice of Violation and Penalty & Order to Correct, notifying a Landlord of the violation, the Landlord's obligations under this Ordinance, steps required to remedy the situation, including a reasonable timeline for doing so, a penalty of \$100.00 per day commencing on the day following the expiration of the timeframe for compliance set forth in the first Notice of Violation in Section A, above, and of the right to appeal the Land Use Code Enforcement Officer's interpretation of this Ordinance to the Berwick Board of Appeals.
- C. If the noted violation persists beyond the timeframe specified in the Notice of Violation and Penalty & Order to Correct in section B, above, the Town Land Use Code Enforcement Officer shall subsequently mail, by the same methods prescribed in section A, above, a second Notice of Violation and Penalty & Order to Correct, notifying a Landlord of the violation, the Landlord's obligations under this Ordinance, steps required to remedy the situation, including a reasonable timeline for doing so, a penalty of \$250.00 per day commencing on the day following the expiration of the timeframe for compliance set forth in the second Notice of Violation in Section B, above, and of the right to appeal the Land Use Code Enforcement Officer's interpretation of this Ordinance to the Berwick Board of Appeals.
- ~~D. If the noted violation persists beyond the timeframe specified in the Notice of~~
Violation and Penalty & Order to Correct in section C, above, the Town Land Use Code Enforcement Officer shall subsequently refer the matter, and all related materials, to the Town Manager for presentation to the Municipal Officers at their next regular meeting for consideration of discretionary land use enforcement legal action.

7. Penalties

Penalties for non-compliance with this Ordinance shall be the same as those set forth for land use violations in 30-A M.R.S. Section 4452, which is hereby incorporated by reference, as it may be amended from time to time, subject to the caps established in section 6, Enforcement, above.

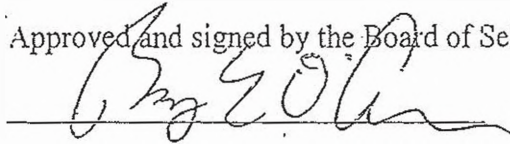
Instituting penalty caps in section 6, Enforcement, above, which are lower than those established in 30-A M.R.S. Section 4452 is intended to allow administration of this Ordinance locally with clarity.

No section of this Ordinance is intended to be construed as a waiver of any Town rights to collect penalties or restitution of different amounts than those established in this Ordinance, including reasonable attorney's fees, under 30-A M.R.S. Section 4452 if a land use enforcement legal action becomes necessary to compel compliance.

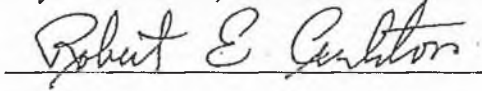
8. Appeals Procedure

Appeal may be taken from any decision of the Code Enforcement Officer under this Ordinance to the Berwick Board of Appeals, on application forms available and provided by the Town Land Use Code Enforcement Officer for such purpose, within 30 days in accordance with the provisions set forth in 30-A M.R.S. Section 2691(4). Further rights to appeal, if any, are as established by State law and the Maine Rules of Civil Procedure.

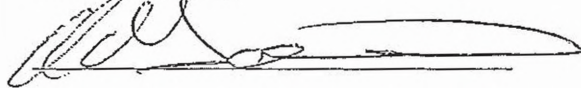
Approved and signed by the Board of Selectmen this 16th day of September 2014:



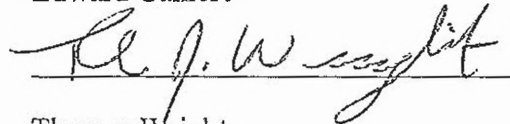
Bryan O'Connor, Chairman of the Board



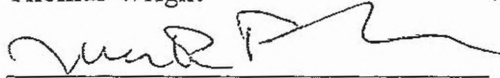
Robert Crichton



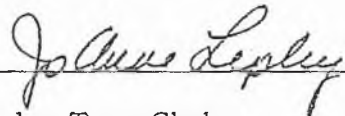
Edward Ganiere



Thomas Wright



Mark Pendergast

ATTEST: 

Jo Anne Lepley, Town Clerk

Town of Berwick

Where Tradition Meets Tomorrow



Land Use Ordinance

Adopted: June 8, 1993

Amended: June 12, 2018

11 Sullivan Street
Berwick, Maine

(207) 698-1101

berwickmaine.org

Table of Contents

	<u>Page</u>
Article I Preamble.....	1
1.1 Authority	1
1.2 Short Title.....	1
1.3 Purpose	1
1.4 Jurisdiction	1
Article II Definitions of Terms Used in this Ordinance	2
2.1 Construction of Language	2
2.2 Definitions	2
Article III Official Land Use Map.....	27
3.1 Official Land Use Map	27
3.2 Certification of Land Use Map.....	27
3.3 Changes of the Official Land Use Map	27
3.4 Replacement of Official Land Use Map.....	27
Article IV Establishment of Districts.....	28
4.1 Classes of Districts	28
4.2 Rules Governing District Boundaries.....	28
4.3 Rules Governing When One Lot is Located in Two Different Districts.....	28
Article V General Provisions.....	29
5.1 Land use Requirements	29
5.2 Non-Conformance	29
5.3 Mixed Use	32
Article VI District Regulations.....	33
6.1. Basic Requirement.....	33
6.1.2 Omitted Uses	33
6.2 Land Use District Regulations.....	33
Land Use Table	34
6.3 Dimensional Requirements.....	39
6.3.1 Residential Growth Limitations Provisions.....	40
6.4 Village Overlay District.....	41
6.5 Density on Division of Land	55
Article VII Performance Standards -- General Requirements	56
7.1 Air Emissions	56
7.2 Buffer Areas	56
7.3 Explosive Materials	56
7.4 Glare	56
7.5 Landscaping.....	56
7.6 Noise.....	56
7.7 Off-Street Parking and Loading	57
7.8 Refuse Disposal	61
7.9 Traffic	61
7.10 Sewage Provisions.....	62
7.11 Setbacks and Screening	62
7.12 Signs	63
7.13 Soils	64
7.14 Erosion and Sedimentation Control	65
7.15 Storage.....	65
7.16 Storm Water Management.....	65
7.17 Toxic and Noxious Discharges.....	66

7.18 Water Quality	66
7.19 Water Supply	66
7.20 Access to Lots	66
7.21 Non-Storm Water Discharge	67
7.22 Post-Construction Stormwater Management Article	71
7.23 Safety & Sanitation Provisions	74
Appendix 1 Maintenance Agreement for Stormwater Facilities	75
Appendix 2 Annual Stormwater Management Facilities Certification	77
 Article VIII Performance Standards, Specific Activities and Land Uses	 79
8.1 Campgrounds and Tenting Grounds	81
8.2 Home Occupation	81
8.3 Hotels/Motels and Inns	81
8.4 Kennels and Veterinary Hospitals	82
8.5 Mobile Home parks	83
8.6 Apartment Buildings and Multi-Family Developments	86
8.7 Professional Offices in the Urban Residential District	87
8.8 Cluster Developments	87
8.9 Restaurants	91
8.10 Mineral Industry	91
8.11 Waste Facilities	94
8.12 Agriculture and Animal Husbandry	96
8.13 Owner Occupied Apartments	96
8.14 Adult Business	97
8.15 Automobile Graveyard, Automobile Recycling Business and Junkyards	98
8.16 Construction in Flood Hazard Areas	98
8.17 Accessory Structure	99
8.18 Wireless Communication Facilities and Communications Towers	99
8.19 Temporary Storage	100
8.20 Swimming Pools	101
8.21 Automobile Hobbyist	102
8.22 Private Pond with or without a Dam	102
8.23 Small Wind Energy Systems	102
8.24 Elderly Housing	104
8.25 Medical Marijuana	105
8.26 Automobile Service/Motorcycle Repair Business	106
8.27 Wholesale Business	106
8.28 Commercial Mini-Storage	106
8.29 Retail Business	106
8.30 Vehicle Sales	106
8.31 Congregate Housing	106
8.32 Clearing or removal of vegetation for activities other than timber harvesting	106
8.33 Outdoor Wood Furnace	107
8.34 Fringe Financial	107
8.35 Low Impact Industrial	107
8.36 Drug Store	107
 Article IX Administration, Enforcement, and Penalties	 108
9.1 Basic Requirements	108
9.2 Permit Application	108
9.3 Foundation Certification	110
9.4 Certificate of Occupancy Required	110
9.5 Enforcement Officer	110
9.6 Legal Action and Violations	110
9.7 Fines	111
9.8 Conditional Use Permits and Site Plan Review	111

Article X Board of Appeals	119
10.1 Establishment and Organization	119
10.2 Proceedings of the Board of Appeals	119
10.3 Powers and Duties of the Board of Appeals	119
10.4 Variances	119
10.5 Appeals to the Board of Appeals	120
10.6 Decisions of the Board of Appeals	122
10.7 Stay of Proceedings	122
Article XI Planning Board	123
11.1 Establishment	123
11.2 Appointment	123
11.3 Organization and Rules	123
11.4 Duties and Powers	124
Article XII Amendments	125
12.1 Initiation	125
12.2 Procedure	125
12.3 Adoption	125
Article XIII Legal Status Provisions	126
13.1 Conflict with Other Laws	126
13.2 Separability	126
13.3 Effective Date	126
Article XIV Shoreland Zoning	127
14.1 Purposes	127
14.2 Authority	127
14.3 Applicability	127
14.4 Effective Date	127
14.5 Availability	128
14.6 Severability	128
14.7 Conflicts with Other Ordinances	128
14.8 Amendments	128
14.9 Districts and Zoning Map	128
14.10 Interpretation of District Boundaries	129
14.11 Land Use Requirements	129
14.12 Non-conformance	129
14.13 Establishment of Districts	135
14.14 Table of Land Uses	135
14.15 Land Use Standards	138
14.16 Administration	152
Article XV Community Facilities Impact Analysis	159
15.1 Purpose of Program	159
15.2 Authority	159
15.3 Use of Impact Fees	159
15.4 Applicability	159
15.5 Segregation of Impact fees from General Fund	160
15.6 Refund of Impact Fees	160

**TOWN OF BERWICK
LAND USE ORDINANCE**

ARTICLE I PREAMBLE

1.1 Authority.

This ordinance has been prepared in accordance with the provisions of 30-A Maine Revised Statutes Annotated (M.R.S.A.), Sections 3001 and 4352; and 38 M.R.S.A., Section 435, *et. seq.*

1.2 Short Title.

This ordinance and the accompanying Official Land Use Map shall be known as and may be cited as the "Land Use Ordinance, Town of Berwick, Maine."

1.3 Purpose.

The purpose of this ordinance is to promote the health, safety, and general welfare of the residents of the town; to encourage the most appropriate use of land throughout the municipality; to promote traffic safety; to provide safety from fire and other elements; to provide adequate light and air; to prevent overcrowding of real estate; to promote a wholesome home environment; to prevent housing development in unsanitary areas; to provide an allotment of land area in new developments sufficient for all the requirements of community life; to conserve natural resources; 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 freshwater 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 and coastal waters; to conserve natural beauty and open space; to anticipate and respond to the impacts of development in shoreland areas; and to provide for adequate public services, as an integral part of a comprehensive plan for municipal development.

1.4 Jurisdiction.

The provisions of this ordinance shall govern all land and all structures within the boundaries of the Town of Berwick.

ARTICLE II DEFINITIONS OF TERMS USED IN THIS ORDINANCE

2.1 Construction of Language.

In the interpretation and enforcement of this ordinance, all words other than those specifically defined, except as provided in Section 2.2, "Definitions of the Town of Berwick Land Use Ordinance" herein contained, shall have the meaning implied by their context in the ordinance or their customary dictionary definition. In the case of any difference of meaning or implication between the text of this ordinance and any map, illustration, or table, the text shall control.

The word "person" includes firm, association, organization, partnership, trust, company, or corporation, as well as an individual or any other legal entity.

The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.

The word "shall" and "will" are mandatory, the word "may" is permissive. The word "lot" includes the words "plot" and "parcel."

The word "used" or "occupied," as applied to any land or building, shall be construed to include the words "intended, arranged, or designed to be used or occupied."

The words "town" or "municipality" mean the Town of Berwick, Maine.

2.2 Definitions.

In this ordinance the following terms shall have the following meanings:

Access Road: See Right of Way.

Accessory Use or Structure: A use or structure which is customarily incidental to the principal use or structure. The term "incidental" in reference to the principal use or structure shall mean subordinate and minor in significance 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: Shall mean the cultivation of soil, producing or raising crops, including gardening as a commercial operation. More specifically, the term shall include the production, keeping or maintenance for sale or lease, of plants/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 greenhouse products. The term shall also include greenhouses, nurseries and versions thereof, but those two terms, when used alone, shall refer specifically to a place where flowers, plants, shrubs, and/or trees are grown for sale. Agriculture does not include forest management and timber harvesting activities.

Aircraft Approach Zone: An area that begins 200 feet beyond the ultimate end of a runway and ends 10,200 feet beyond the end of a runway. The approach zone extends in a cone-shaped area 250 feet each side of the extended center line of the runway 200 feet beyond the ultimate end of the runway and flares to 1,750 feet each side of the projected center line 10,200 feet from the ultimate end of the runway.

Alteration: Any change, addition, redevelopment or modification in construction, other than cosmetic or decorative or any change in the structural members of buildings such as bearing walls, columns, beams, or girders.

Amusement Center: Any private, commercial premises which are maintained or operated primarily for the amusement, patronage, or recreation of the public, containing four or more table sports, pinball machines, video games, or similar mechanical or electronic games, whether activated by coins, tokens, or discs, or whether activated through remote control by the management.

Applicant: A person with requisite right, title or interest, or an agent for such Person who has filed an application for development that requires a Post-Construction Stormwater Management Plan under this Ordinance.

Animal Husbandry: The production of domestic animals or livestock, in all of the phases of breeding, feeding and management.

Antenna: Any exterior apparatus or collection of apparatus designed for telephone, radio, television, personal communications service, pager network, or any other communications through the sending or receiving of electromagnetic waves of any bandwidth, except for those used only for the reception of television or radio signals. The Federal Telecommunications Act exempts amateur "ham" radio stations.

Aquaculture: The growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

Authorized Agent: Anyone having written authorization to act in behalf of a property owner, signed by the property owner.

Auto Body: Any repair or alteration to the body or frame of a motor vehicle including motorcycles, motor bikes or motor scooters.

Automobile Graveyard: Shall mean a yard, field or other area used as a place of storage, other than temporary storage by an establishment or place of business which is engaged primarily in doing auto body repair work for the purpose of making repairs to render a motor vehicle serviceable, for three or more unserviceable, discarded, worn-out or junked motor vehicles. This does not apply to an automobile hobbyist.

Automobile Hobbyist: A person who is not primarily engaged in the business of selling any of the following vehicles or parts from those vehicles: antique autos, antique motorcycles, classic vehicles, horseless carriages, reconstructed vehicles, street rods or parts of these vehicles as these vehicles are defined in M.R.S.A., Title 29-A, Section 101 as long as the hobbyist's activities comply with all applicable federal and state statutes and rules and municipal ordinances, other than ordinances that are more restrictive regarding the storage of vehicles or vehicle parts that are collected by a hobbyist.

Automobile Recycling Business: Means the business premises of a person who purchases or acquires salvage vehicles for the purpose of reselling the vehicles or component parts of the vehicles or rebuilding or repairing salvage vehicles for the purpose of resale or for selling the basic materials in the salvage vehicles, provided that 80 percent of the business premises specified in the application is used for automobile recycling operations.

Automobile Service: Auto repair garages, gasoline service stations, car washes, machinery sales and service. Retail automobile parts and supplies are not considered automobile business.

Base Flood: Means the flood having a one percent chance of being equaled or exceeded in any given year alternately referred to as the 100-year flood.

Basal Area: The area of cross-section of a tree stem at 4 ½ feet above ground level and inclusive of bark.

Basement: Outside of the shoreland zone, the term shall mean the enclosed area underneath a structure, typically having a masonry floor and walls which comprise the structure's foundation. The clear height up to the joists supporting the floor directly above is three feet or greater. In the shoreland zone the term shall mean any portion of a structure with a floor-to-ceiling height of 6 feet or more and having more than 50% of its volume below the existing ground level.

Bed and Breakfast: A single family dwelling in which lodging, or lodging and meals are offered to the general public for compensation, offering no more than 10 bedrooms for lodging purposes.

Best Management Practices (“BMP”): “BMPs” means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Boardinghouse: Any residential structure where lodging and/or meals are provided for compensation for a period of at least one week, and where a family residing in the building acts as proprietor or owner. There shall be no provisions for cooking in any individual guest room. The number of boarders shall be not more than eight in residence at any one time.

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.

Boathouse: A non-residential structure designed for the purpose of protecting or storing boats for non-commercial purposes.

Bottle Club: An establishment where no alcoholic beverages are sold, but where members, guests or customers provide their own alcoholic beverages, paying a fee or other consideration for admission or membership to the bottle club and/or for set-ups.

Building: Any structure having a roof supported by columns or walls for the housing or enclosure of persons, animals, or personal property.

Building Footprint: means the total area of the foundation of the structure, or the furthest exterior wall of the structure projected to natural grade, not including stairs, patios, and decks.

Building Height: The vertical distance measured between the average finished grade of the ground at the front of a building to the highest point of a flat roof, to the deck of a mansard roof, or to the mean height between eaves and ridges of a gable, hip, or gambrel roof. Not to include chimneys, spires, towers, or similar accessory structures which have no floor area.

Build To Line: A line parallel to the property line or right of way where the façade of the building is required to be located.

Bureau: State of Maine Department of Conservation’s Bureau of Forestry

Business Sign: An attached or freestanding structure which directs attention to a business or profession conducted on the premises.

Campground: An area or tract of land to accommodate two 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.

Cemetery: Property used for the interring of the dead.

Change of Use: A change from one category in the land use table to another or the addition of a new category to an existing use.

Channel: A natural or artificial watercourse with definite beds and banks to confine and conduct continuously or periodically flowing water. Channel flow is water flowing within the limits of the defined channel.

Church/Parish House: A building or structure, or groups of buildings or structures, which by design or construction are primarily intended for the conducting of organized religious services and accessory uses therewith.

Clean Water Act: The federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also known as the "Clean Water Act"), and any subsequent amendments thereto.

Club: Any association of persons organized for social, religious, benevolent, or academic purposes; whose facilities are open to members and guests including fraternities, sororities, and social organizations.

Club Facility: A place, the primary use of which is for meetings and activities associated with groups, such as but not limited to, those organized for social, religious, benevolent or academic purposes that are open to members and guests.

Cluster Development: A development designed to promote the creation of open space by a reduction in dimensional and area requirements.

Code Enforcement Officer: A person appointed by the municipal officers to administer and enforce this ordinance. Reference to the Code Enforcement Officer (CEO) may be construed to include building inspector, plumbing inspector, electrical inspector, and the like, where applicable.

Commercial Mini-Storage: means a structure containing three or more units which are available for lease or rent by persons other than residents of the premises for the storage of goods not related to the sale or manufacture of goods on the same lot.

Commercial Recreation: Any commercial enterprise which receives a fee in return for the provision of some recreational activity including but not limited to: racquet clubs, health facility, amusement parks but not including amusement centers.

Communications Tower: Any structure, whether freestanding or in association with a building or other permanent structure, that is designed and constructed primarily for the purpose of supporting one or more antenna. The term includes radio or television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, and similar structures. The Federal Telecommunications Act exempts amateur "ham" radio stations.

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.

Community Living Arrangement: A housing facility for eight or fewer persons with disabilities that is approved, authorized, certified or licensed by the State. A community living arrangement may include a group home, foster home or intermediate care facility.

Conditional Use: A use permitted only after review and approval by the Planning Board. A Conditional Use is a use that would not be appropriate without restriction, but which is permitted provided that all performance standards and other requirements of this Ordinance are met.

Conditional Use Permit: A permit authorized by the Planning Board for a conditional use. A Conditional Use Permit may be issued only after the applicant has followed the procedures of this Ordinance.

Congregate Housing: A multi-family dwelling with central dining facilities serving functionally impaired persons.

Constructed: Includes built, erected, altered, reconstructed, moved upon, or any physical operations on the premises which are required for construction. Excavation, fill, paving, new development, drainage, and the like, shall be considered as part of construction.

Construction Activity: Construction Activity including one acre or more of Disturbed Area, or activity with less than one acre of total land area that is part of a subdivision, if the subdivision will ultimately disturb equal to or greater than one acre.

Cross-sectional area: The cross-sectional area of a stream or tributary stream channel is determined by multiplying the stream or tributary stream channel width by the average stream or tributary stream channel depth. The stream or tributary stream channel width is the straight line distance from the normal high-water line on one side of the channel to the normal high-water line on the opposite side of the channel. The average stream or tributary stream channel depth is the average of the vertical distances from a straight line between the normal high-water lines of the stream or tributary stream channel to the bottom of the channel.

Daycare Center: An establishment where more than 12 children will be cared for in return for payment.

Daycare Home (Family Daycare): An establishment, including a private residence as defined under the Rules of the Maine Department of Human Services Chapter 38, Licensing of Daycare Homes.

DBH: The diameter of a standing tree measured 4.5 feet from ground level.

Decorative Changes: Repainting; removing or replacing trim, railings, or other nonstructural architectural details; or the addition, removal or change of location of windows and doors.

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.

Discharge: Any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of Pollutants to “waters of the State.” “Direct discharge” or “point source” means any discernible, confined and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which Pollutants are, or may be discharged.

Disruption of Shoreline Integrity: The alteration of the physical shape, properties, or condition of a shoreline at any location by timber harvesting and related activities. A shoreline where shoreline integrity has been disrupted is recognized by compacted, scarified and/or rutted soil, an abnormal channel or shoreline cross-section, and in the case of flowing waters, a profile and character altered from natural conditions.

District: A specified portion of the municipality, delineated on the Official Land Use Map, within which certain regulations and requirements or various combinations thereof apply under the provisions of this ordinance.

Disturbed Area: Disturbed Area is clearing, grading and excavation. Mere cutting of trees, without grubbing, stump removal, disturbance or exposure of soil is not considered “disturbed area.” “Disturbed area” does not include routine maintenance but does include redevelopment. “Routine maintenance” is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of land or improvements thereon.

Dog Daycare: A boarding kennel that cares for dogs on a daily basis for a fee. Training may be a part of this use. Overnight boarding is not included in this definition.

Drive-Up Window, Drive-Up or Drive-Through: A portion of a business or a structure which allows the distribution of product(s) or services through an access point to serve client(s) in motor vehicle(s)

Driveway: Outside of the shoreland zone this term shall include a vehicular access-way of any length serving two single-family dwellings or one two-family dwelling, or less. Within the shoreland zone this term shall include a vehicular access-way less than five hundred (500) feet in length serving two single-family dwellings or one two-family dwelling, or less.

Drug store: means an establishment primarily engaged in the retail dispensing of prescription drugs and may offer nonprescription drugs, medical aids and convenience goods, but shall not permit the sale or distribution of medical or retail marijuana. The definition of drug store includes a pharmacy

Dwelling: Any building, or structure, or portion thereof designed or used for residential purposes.

1. Single-Family Dwelling shall mean any structure containing only one dwelling unit for occupation by not more than one family, and may also include an owner-occupied apartment.

2. Two-Family Dwelling shall mean a building containing only two dwelling units, for occupation by not more than two families.

3. Multi-Family Dwelling shall mean a building containing three or more dwelling units, such buildings being designed for residential use and occupancy by three or more families living independently of one another, with the number of families not exceeding the number of dwelling units.

Dwelling Unit: Shall mean a room or suite of rooms designed and equipped exclusively for use by one family at a time as a habitation and which contains independent living, cooking, sleeping, and sanitary toilet facilities. The term includes manufactured housing and rental units that contain independent living, cooking, sleeping, and sanitary toilet facilities regardless of the time-period rented. Recreational vehicles or motel units are not residential dwelling units.

Education Facility: Any building or part thereof which is designed, constructed or used for educational or instruction in any branch of knowledge.

Elderly Housing: A dwelling or group of dwellings and shared community space, providing shelter and services to elderly persons, which may include meals, housekeeping, transportation, recreational activities, personal-care assistance, and the like. Elderly persons shall mean a person 55 years old or older.

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.

Enforcement Authority: The Code Enforcement Officer, the person(s) or department authorized by the Municipality to administer and enforce this Ordinance.

Essential Services: 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.

Exempt Person or Discharge: Any Person who is subject to a Multi-Sector General Permit for Industrial Activities, a General Permit for Construction Activity, a General Permit for the Discharge of Stormwater from the Maine Department of Transportation and the Maine Turnpike Authority Municipal Separate Storm Sewer Systems, or a General Permit for the Discharge of Stormwater from State or Federally Owned Authority Municipal Separate Storm Sewer System Facilities; and any Non-Storm Water Discharge permitted under a NPDES permit, waiver, or waste discharge license or order issued to the discharger and administered under the authority of the U.S. Environmental Protection Agency ("EPA") or the Maine Department of Environmental Protection ("DEP").

Expansion: In relation to a building, expansion shall include: Enlargement of floor area; construction of a basement; or enlargement of building enclosure.

Expansion of a Structure within the Shoreland Zone: An increase in the floor area or volume of a structure, including but not limited to all extensions, such as 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.

Exterior Walls of Traditional Site-Built Appearance: Siding materials such as clapboards, shingles, and shakes, including synthetic or metal siding manufactured to closely resemble clapboards, shingles and shakes. This term shall also include masonry, wood board-and-batten, and "Texture 111" exterior plywood, but shall not include artificial masonry, or fake board-and-batten made from metal or plastic.

Family: One or more persons occupying a premises, and living as a single housekeeping unit.

Filling: Depositing or dumping any matter on or into the ground or water.

Finance, Insurance and Real Estate: Establishments such as, but not limited to, banks and trust companies, credit agencies, investment companies, brokers and dealers of securities and commodities, security and commodity exchanges, insurance agents, brokers, lessors, lessees, buyers, sellers, agents and developers of real estate.

Flea Market: See Used Merchandise Sales.

Floating Slab: A reinforced concrete slab which is designed to withstand pressures both from below and above.

Floodplain: The area designated as being in the special flood hazard area on the Flood Insurance Rate Map of the Town of Berwick, published by the Federal Emergency Management Agency, August 4, 1991.

Floodway: The channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation by more than one foot in height.

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.

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.

Forest Stand: A contiguous group of trees sufficiently uniform in age class distribution, composition, and structure, and growing on a site of sufficiently uniform quality, to be a distinguishable unit.

Forested Wetland: A freshwater wetland dominated by woody vegetation that is six (6) meters tall [approximately twenty (20) feet] or taller.

Foundation: Outside of the shoreland zone this term shall include the supporting substructure of a building or other structure, including but not limited to basements, slabs, sills, posts or frost walls. Within the shoreland zone this term shall include the supporting substructure of a building

or other structure, excluding wooden sills and post supports, but including basements, slabs, frost walls, or other base consisting of concrete, block, brick or similar material.

Freshwater Wetland: Swamps, marshes, bogs and similar areas, other than forested wetlands, which are:

1. Of ten or more contiguous acres; or of less than ten 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 ten acres; and
2. 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.

Fringe Financial: A lending institution that typically has but is not limited to the following features: the loans are for small amounts; the loans are typically due in 4 weeks or less; and associated finance charges exceed 100% APR. These businesses include but are not limited to payday and auto title loan services.

Frontage: The dimension between the two sidelines of a lot, measured along the property line that borders upon whatever way serves as legal access to the lot. The following ways shall constitute legal access to a lot: (a) a way accepted by or established as belonging to the Town, the County, or the State; (b) a way shown on an approved subdivision plan; or (c) an unaccepted street existing prior to the original enactment of the Town's Subdivision Regulations provided it is shown on a plat recorded in the registry of deeds prior to such enactment and is deemed adequate as a street by the Planning Board as evidenced by its endorsement on the subdivision plan. Where a lot is situated on a curve of a street or on a corner of two streets, the measurement of frontage may include the entire length of the property line along such street or streets.

Frontage, Shore: The horizontal distance, measured in a straight line, between the intersections of the lot lines with the shoreline at normal high water elevation.

Frost Wall: A masonry foundation wall extending below the ground surface, supported by footings located below the frost-line to protect structures from frost heaves.

Function Hall: Premises that are frequently rented out for public or private activities that are not repeated on a weekly basis, and that are not open to the public on a daily basis at times other than when an event is scheduled.

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 that can not 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 aids, basins and channels, retaining walls, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that can not reasonably be located or operated at an inland site, and uses that primarily provide general public access to inland waters.

Golf Course: A tract of land for playing golf, improved with tees, greens, fairways, hazards and which may include clubhouses and shelters.

Grade Beam: That part of a foundation system (usually in a building without a basement) which supports the exterior wall of the superstructure; commonly designed as a beam which bears directly on the column footings or may be self-supporting. The grade beam is located at the ground surface and is well-drained below.

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 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. Beaver Dam Pond and Hatfield Lake are considered "great ponds."

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.

Harvest Area: The area where timber harvesting and related activities, including the cutting of trees, skidding, yarding, and associated road construction take place. The area affected by a harvest encompasses the area within the outer boundaries of these activities, excepting unharvested areas greater than 10 acres within the area affected by a harvest.

Hazardous Waste: Means a waste substance or material, in any physical state, designated as hazardous by the Board of Environmental Protection pursuant to 38 M.R.S.A., Section 1303-A. It does not include waste resulting from normal household or agricultural activities. The fact that a hazardous waste or part or constituent may have value or other use or may be sold or exchanged does not exclude it from this definition.

Height of a Structure: Outside the shoreland zone the term shall mean the vertical distance between the highest point of a structure and the average grade of the ground adjacent to the structure. Within the shoreland zone the term shall mean 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 carried on in a dwelling unit or structure accessory to a dwelling unit and which is 1) clearly incidental and secondary to the use of the dwelling for residential purposes and which does not change the character thereof; and 2) does not include any employees other than family members residing in the home. The term "home occupation" shall include both professional and personal services.

Hospital: An institution providing, but not limited to, overnight health services, primarily for in-patients, and medical or surgical care for the sick or injured, including as an integral part of the institution such related facilities as laboratories, out-patient departments, training facilities, central services facilities, and staff offices.

Hotel: A building in which lodging or meals and lodging are offered to the general public for compensation and in which ingress and egress to and from the rooms are made primarily through an inside lobby or office. The hotel may contain such accessory services and facilities for the

benefit of its guests, and only incidentally for the general public, as news-stands, personal grooming facilities and restaurants.

Impervious Surface: The total area of a parcel that consists of buildings and associated constructed facilities or areas that will be covered with a low-permeability material, such as asphalt or concrete, and areas such as gravel roads and unpaved parking areas that will be compacted through design or use to reduce their permeability. Common impervious surfaces include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and macadam or other surfaces which similarly impede the natural infiltration of storm water. A natural or man-made waterbody is not considered an impervious surface, but is treated as an immediate runoff surface in curve number calculations.

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 individuals and which involves site improvements which may include but not be limited to a gravel pad, parking area, fireplace, or tent platform.

Industrial: The assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or the extraction of minerals. These activities do not meet the definition of Low Impact Industrial.

Industrial Activity: Any activity or activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b) (14).

Inland Wetlands: Land, including submerged land, which consists of any of the soil types designated as poorly drained, very poorly drained, and alluvial soils by the National Cooperative Soil Survey.

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.

Intermittent Light: Changing in less than 30 seconds.

Junkyard: A yard, field or other area used as a place of storage for:

1. Discarded, worn-out or junked plumbing, heating supplies, household appliances and furniture;

2. Discarded scrap and junked lumber;
3. Old or scrap copper, brass, rope, rags, batteries, paper trash, rubber or plastic debris, waste and all scrap iron, steel and other scrap ferrous or non-ferrous material.

Kennel: "Kennel" means one pack or collection of dogs or wolf hybrids kept in a single location under one ownership for breeding, hunting, show, training, field trials and exhibition purposes. The sale or exchange of more than one litter of puppies within a 12 month period shall be considered a kennel.

1. Types of Kennels.

- a. Boarding kennel. "Boarding kennel" means any place, building, tract of land or abode in or on which three or more privately owned dogs or other pets, or both, are kept at any one time for their owners in return for a fee. A person maintaining a boarding kennel must obtain a license from the Department of Agriculture, Food and Rural Resources, Division of Animal Health and Industry and is subject to rules adopted by the department.

- b. Breeding kennel. "Breeding kennel" means a facility operated for the purpose of breeding or buying, selling or in any way exchanging dogs or cats for value that exchanges more than 16 dogs or 16 cats in a 12-month period. A person maintaining a breeding kennel must obtain a license from the Department of Agriculture, Food and Rural Resources, Division of Animal Health and Industry and is subject to rules adopted by the department.

2. Requirements.

- a. Kennel license. A person having a pack or collection of dogs shall obtain a kennel license from the town where the dogs are kept and that person is subject to rules adopted by the Department of Agriculture, Food and Rural Resources, Division of Animal Health and Industry. The sex, registered number and description are not required of dogs covered by a kennel license. The license expires December 31 annually. The kennel license permits the licensee or authorized agent to transport under control and supervision the kennel dogs in or outside the state. A kennel owner may not keep more than 10 dogs per license.

- b. Kennel inspection. An animal control officer must inspect annually a kennel prior to the municipality issuing a kennel license.

Laboratory: A place equipped for experimental study in a science or for testing and analysis.

Laboratory Research Facility: An establishment or other facility for carrying on investigation in the natural, physical or social sciences, or engineering and development as an extension of investigation with the objective of creating an end product.

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: A parcel of land occupied or capable of being occupied by one building and the accessory structures or uses customarily incidental to it, including such open spaces as are required by this ordinance, and having frontage upon a public street, right-of-way or private way.

Lot Area: The area of land enclosed within the boundary lines of a lot, not including the area of any land which is: part of a right of way for a thoroughfare or easement, such as, but not limited to, surface drainage easement, or traveled rights of way (but not including utility easement servicing that lot); or which is below the normal high water line of a water body or upland edge of a wetland.

Lot Corner: A lot with at least two contiguous sides abutting upon a street or right of way.

Lot Coverage: The percentage of the lot covered by all structures, parking lots and other non-vegetated surfaces.

Lot Lines: All municipal boundaries shall be lot lines, as well as the lines bounding a lot as defined below:

1. **Front Lot Line:** On an interior lot the line separating the lot from the street or right of way. On a corner or through lot, the line separating the lot from either street or rights of way.
2. **Rear Lot Line:** The lot line opposite the front lot line. On a lot pointed at the rear, the rear lot line shall be an imaginary line between the side lot lines parallel to the front lot line, not less than ten feet long, lying farthest from the front lot line. On a corner lot, the rear lot line shall be opposite the front lot line of least dimension.
3. **Side Lot Line:** Any lot line other than the front lot line or rear lot line.

Lot of Record: A parcel of land, a legal description of which or the dimensions of which are recorded on a document or map on file in the York County Registry of Deeds.

Lot Shorefront: Any lot abutting a body of water in the Shoreland Zone(s).

Lot Width: The distance between the side boundaries of the lot measured at the front setback line.

Low Impact Industrial: Industrial activity involving the manufacturing, assembly, packaging, repairing, or processing of goods. Including custom activities usually involving individual or special design, or handiwork and most high technology production. Low impact industrial uses include, but are not limited to the following: aerospace electronics, bakeries, breweries, distilleries, electronics assembly, jewelry, musical instruments, photonics, pottery, packaging of foods, pharmaceuticals, printing and publishing, science and research facilities, software, sporting & recreation equipment and woodworking. Low Impact Industrial uses are compatible, due to their size and nature of impact, with residential, commercial and other Low Impact Industrial uses because of the level of traffic generated, emissions levels, lighting and odors generated. See Applicable Performance Standards of the Berwick Land Use Ordinance Article 8.35 Low Impact Industrial.

Manufactured Housing (see also definition for modular home): A structural unit or units designed as housing, and constructed in a manufacturing facility and transported by the use of its own chassis or an independent chassis, to a building site. The term includes any type of building which is constructed at a manufacturing facility and then transported to a building site where it is used for housing and may be purchased or sold by a dealer in the interim. For purposes of this ordinance, two types of manufactured housing are included. Those two types are:

1. HUD-code homes, which are those units constructed after June 15, 1976 that the manufacturer certifies are constructed in compliance with the HUD standard, meaning structures, transportable in one or more sections that, in the traveling mode, are 8 body feet or more in width and 40 body feet or more in length or, when erected on site, are 320 or more square feet, and 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; except that such term shall 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 the United States Department 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 Code 5401, et seq;

2. Pre-HUD-code homes, which are those units constructed prior to June 15, 1976, meaning structures, transportable in one or more sections, that are 8 body feet or more in width and are 32 body feet or more in length and 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.

For purposes of flood damage prevention standards, the term manufactured housing also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

Manufactured housing on individual lots shall meet the following design criteria;

1. A pitched, shingled roof
2. A permanent foundation,
3. Exterior siding that is residential in appearance, and
4. Electrical wiring that meets the National Electrical Code

Manufacturing: The making of goods and articles by hand or machinery. Manufacturing shall include assembling, fabricating, finishing, packaging or processing operations.

Marijuana: Marijuana means the leaves, stems, flowers and seeds of all species of the plant genus cannabis, whether growing or not. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake or sterilized seed of the plant which is incapable of germination.

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.

Masonry-type Skirting: Concrete, concrete blocks, brick, stone or similar materials which are arranged to resemble a foundation.

Medical Care Facility: An institution providing overnight health services and/or medical or surgical care. Laboratories, outpatient, training, central services and staff offices are related uses. A medical care facility includes hospitals, nursing homes, convalescent center, and similar service facilities and excludes methadone clinics.

Medical Office: A room or a group of rooms used for conducting the affairs of a person engaged in medicine or dentistry. This includes outpatient, training, central services and staff offices.

Medical Marijuana: Marijuana that is acquired, possessed, cultivated, manufactured, used, delivered, transferred or transported to treat or alleviate a qualifying patient's debilitating medical condition or symptoms associated with the qualifying patient's debilitating medical condition.

Medical Marijuana Caregiver: A person, licensed hospice provider or licensed nursing facility that is designated by a qualifying patient to assist the qualifying patient with the medical use of marijuana in accordance with state law. A person who is a medical marijuana caregiver must be at least 21 years of age and may not have been convicted of a disqualifying drug offense.

Medical Marijuana Dispensary: A not-for-profit entity registered pursuant to Section 6 of the State of Maine 10-144 CMR Chapter 122 Rules Governing the Maine Medical Use of Marijuana Program that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana, paraphernalia or related supplies and educational materials to qualifying patients and the primary caregivers of those patients.

Medical Marijuana Cooperative: Two or more medical marijuana caregivers claiming a location as a primary residence in order to conduct medical marijuana home production. Medical marijuana cooperatives are considered medical marijuana production facilities under the Berwick Land Use Ordinance.

Medical Marijuana Home Production: Cultivating, processing and/or storing of medical marijuana by a qualifying patient at their own residence or a medical marijuana caregiver at their own primary year-round residence for use by a qualifying patient. This use shall be considered an accessory use.

Medical Marijuana Production Facility: A facility used for cultivating, processing, and/or storing medical marijuana by a medical marijuana caregiver at a location which is not the medical marijuana caregiver's primary year-round residence or their patient's primary year-round residence.

Methadone Clinic: A facility specifically established for the distribution of methadone (a substitute narcotic used for the treatment of opiate addiction).

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 12 month period which removes more than 50 cubic yards of 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 Area: See Lot Area.

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.

Mobile Home: A manufactured housing unit constructed prior to June 15, 1976.

Mobile Home Park: A parcel of land under unified ownership designed and/or used to accommodate three or more mobile homes.

Modular Home: State-certified modular homes, which are those units that the manufacturer certifies are constructed in compliance with the State's Manufactured Housing Act and regulations, meaning structures, transportable in one or more sections, that are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to

required utilities, including the plumbing, heating, air-conditioning or electrical systems contained therein.

Modular housing on individual lots shall meet the following design criteria;

1. A pitched, shingled roof
2. A permanent foundation,
3. Exterior siding that is residential in appearance, and
4. Electrical wiring that meets the National Electrical Code

Motel: A building or group of buildings in which lodging is offered to the general public for compensation and where entrance to rooms is made directly from the outside of the building.

Motor Vehicle: A self propelled machine not operated exclusively on tracks or rails but does not include snowmobiles, all-terrain vehicles, motorized wheelchairs or an electric personal assistive mobility device.

Motorcycle Repair Business: Operations which provide service, maintenance, and minor repairs for motorcycles.

Municipal Facility: A building or complex of buildings that house municipal offices and services and which may include cultural, recreational, athletic, convention and entertainment facilities owned and/or operated by a governmental agency.

Municipal Permitting Authority: The municipal official or body that has jurisdiction over the land use approval or permit required for a Development.

Municipal Separate Storm Sewer System, or MS4: Conveyances for storm water, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, State agency or Federal agency or other public entity that discharges directly to surface waters of the State.

Municipality: The Town of Berwick.

Museum: An institution devoted to the procurement, care and display of objects of lasting interest or value. Includes, but is not limited to galleries, art studios, historic structures and public viewing areas.

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit: A permit issued by the EPA or by the Maine DEP that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Native: Indigenous to the local forests.

Neighborhood "Convenience" Store: A store of less than 1,500 square feet of floor space intended to service the convenience of a residential neighborhood with such items as, but not limited to, basic foods, newspapers, emergency home repair articles, and other household items.

Net Residential Acreage: The acreage available for development, excluding the area for streets or access and the areas which are unsuitable for development.

Net Residential Density: The number of dwelling units per net residential acre.

New Development: Any Construction Activity on unimproved Premises.

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 amendments took effect.

Non-Conforming Lot of Record: A lot shown on a recorded plan or deed which does not meet the area, frontage, width, or depth requirements, of the district in which it is located, and was in lawful existence at the time this ordinance and/or subsequent amendments took effect.

Non-Conforming Structure: A structure that does not meet one or more of the following dimensional requirements: setbacks, height, yard or lot coverage. It is allowed solely because it was in lawful existence at the time this ordinance or subsequent amendments took effect.

Non-Conforming Use: Use of land, structures, premises or buildings or parts thereof that is not otherwise 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.

Non-Storm Water Discharge: Any discharge to an MS4 that is not composed entirely of storm water.

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.

Nursing Home: Any facility which provides meals, lodging and skilled nursing care for compensation to include boarding home and convalescent home.

On-Street Parking: An area dedicated to the standing of motor vehicles that is located on a public street.

Out-of-pocket Expenses: All related legal and consultant fees incurred by the town on behalf of the applicant during the review process of the application.

Outdoor Wood Furnace: A fuel burning device designed to burn wood or other approved solid fuels. Heats building space and/or water via the distribution typically through pipes, of fluid heated in the device, typically water or a water/antifreeze mixture.

Owner Occupied Apartment: A separate dwelling located within and subordinate to a single family dwelling, and where the principal dwelling unit or apartment is occupied by a person who has a possessory interest in the real estate.

Parking Lot: A parking lot is all the area devoted to the standing, maneuvering, and circulation of motor vehicles. Parking lots do not include On-Street Parking, driveways or areas devoted exclusively to non-passenger loading. See also, Driveway, Garage, Structured Parking, and Vehicle Areas.

Parking Space: An area of 200 square feet, exclusive of drives or aisles for the parking of vehicles.

Parks and Recreation: Non-commercially operated recreation facilities open to the general public including, but not limited to, playgrounds, parks, monuments, green strips, open space, mini-parks, athletic fields, boat launching ramps, piers and docks, picnic grounds, swimming pools, and wildlife and nature preserves, along with any necessary accessory facilities, restrooms, bath houses, and the maintenance of such land and facilities, but not including campgrounds, commercial recreation, and amusement centers as defined elsewhere in this ordinance.

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.

Personal Sawmill: A machine for sawing logs into lumber able to be moved from lot to lot, similar to a trailer, not to exceed 30 horsepower.

Piers, Docks, Wharves, Bridges and Other Structures and Uses: Extending over or beyond the normal high water line or within a wetland:

1. Temporary: Structures which remain in the water for less than seven months in any period of 12 consecutive months.
2. Permanent: Structures which remain in the water for seven months or more in any period of 12 months.

Pollutant: Dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

Post-Construction Stormwater Management Plan: BMPs and Stormwater Management Facilities employed by a Development to meet the standards of this Ordinance and approved by the Municipal Permitting Authority.

Premises: Any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the Municipality from which Discharges into the Storm Drainage System are or may be created, initiated, originated or maintained.

Principal Structure: The structure in which the primary use of the lot is conducted.

Principal Use: The primary use to which the premises are devoted.

Private Pond: An indentation in the ground capable of holding water, excluding swimming pools, specifically on private property.

Private Road: A private way meeting the town's road construction standards for preparation, sub-base, and base as specified in the Subdivision Regulations for the Town of Berwick, Maine.

Professional Offices: The place of business for, but not limited to, doctors, lawyers, accountants, architects, surveyors, psychiatrists, psychologists, counselors, but not including financial institutions or personal services.

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.

Public Space: A gathering place or part of a neighborhood, downtown, or other area within the public realm that helps promote social interaction and a sense of community. Examples of public spaces may include but are not limited to: plazas, town squares, parks, and outdoor restaurant seating.

Public Utility: Any firm, corporation, municipal department, board or commission authorized to furnish gas, steam, electricity, waste disposal, transportation, or water to the public.

Public Utility Facility: A building necessary for the furnishing of essential public services, such as, but not limited to, natural gas, steam, electricity, waste disposal, communication facilities, transportation or water to the public. This facility shall not be intended for personnel, but for such things as, but not limited to switching stations, relay stations and sewage pumping stations.

Recent floodplain soils: The following soil series as described and identified by the National Cooperative Soil Survey:

Fryeburg, Hadley, Limerick, Lovewell, Medomak, Ondawa, Alluvial, Cornish Charles, Podunk Rumney, Saco, Suncook, Sunday Winooski

Recreation Facility: A place designed and equipped, and which receives a fee in return, for the conduct of indoor and/or outdoor sports, leisure time activities and other customary and usual recreational activities excluding, boat launching facilities.

Recreation Vehicle: A vehicle or vehicular attachment designed to be towed for temporary sleeping or living quarters for one or more persons, which is not a dwelling, 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 road-worthy (i.e., possess a current registration sticker from any State Division of Motor Vehicles).

Recycling Facility: A commercial operation of sorting co-mingled recyclables and marketing for sale, items such as: plastic, glass, tin, aluminum cans, paper and cardboard, and done inside a structure.

Redevelopment: Construction Activity on Premises already improved with buildings, structures or activities or uses, but does not include such activities as exterior remodeling.

Regulated Small MS4: Any Small MS4 regulated by the State of Maine “General Permit for the Discharge of Stormwater from Small Municipal Separate Stormwater Sewer Systems” (“General Permit”), including all those located partially or entirely within an Urbanized Area (UA) and those additional Small MS4s located outside an UA that as of the issuance of the General Permit have been designated by the Maine DEP as Regulated Small MS4s.

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.

Residual basal area: The average of the basal area of trees remaining on a harvested site.

Restaurant, Fast Food: A service establishment whose principal business is the sale of food and/or beverages in a ready-to-consume state for consumption:

1. within the restaurant building,
2. within a motor vehicle on the premises, or
3. off the premises as carry-out orders, and whose principal method of operation is characterized by the service of food and/or beverages in disposable or edible containers.

Restaurant, Standard: A service establishment whose principal business is the sale of food, and/or beverages to customers in a ready-to-consume state, and whose principal method of operation includes one or both of the following characteristics:

1. customers, normally provided with an individual menu, are served their foods and beverages by a restaurant employee at the same table or counter at which food and beverages are consumed; and/or
2. a cafeteria-type operation where food and beverages generally are consumed within the restaurant building.

Retail Business: A place engaged in sale to the ultimate consumer for direct consumption and not for resale.

Retail Use Marijuana: Means the cultivation, manufacture, distribution or selling of marijuana by a retail marijuana establishment as referenced in MRS 7, Section 2442.

Right of Way: An area or strip of land at least 50 feet in width, described in a deed, and dedicated to the purpose of providing access to a parcel or parcels of land abutting it and indicating responsibility for maintaining said right of way. No land in the deeded right of way may be used to meet any dimensional requirements of this ordinance.

Riprap: Rocks, irregularly shaped, and at least six inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two units horizontal to one 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 25 square miles to its mouth. The Salmon Falls River and Little River are considered "rivers."

Road: See Town of Berwick Road Standards.

Satellite Receiving Dish: An antenna designed to receive signals from satellites.

Sawmill: A mill or machine for sawing logs into lumber, may be located in a structure and used as a commercial operation, or is greater than 30 horsepower.

Schools:

1. **Public and Private-Including Parochial School:** An institution for education or instruction where any branch or branches of knowledge is imparted and which satisfies either of the following requirements:
 - a. the school is not operated for a profit or a gainful business; or
 - b. the school teaches courses of study which are sufficient to qualify attendance in compliance with State compulsory education requirements.
2. **Commercial School:** An institution which is commercial or profit-oriented. Examples are dancing, music, riding, correspondence, aquatic, driving, or business schools.

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
 - a. 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
 - a. the extension, regardless of length, will be made by the installation of telephone wires to existing utility poles, or
 - b. the extension requiring the installation of new utility poles or placement underground is less than one thousand (1,000) feet in length.

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

Setback from Water: 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.

Service Business: The offering within a building or on the premises of services to persons or property, excluding automobile service or motorcycle repair business uses, and also excluding any other uses which by nature of noise, odor or as a heavy generator of traffic would be detrimental to the immediate neighborhood. The sale of goods is permitted only when incidental to the providing of services. Barbershops, beauty parlors, laundries, repair shops, and tailor shops are examples of a "service business."

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.

Shoreland Zone: The land area located within 250 feet, horizontal distance, of the normal high water line of any great pond; or river; within 250 feet, horizontal distance, of the upland edge of a freshwater wetland; or within 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 wetland.

Sign: A sign is a display surface, fabric or device containing organized and related elements (letters, pictures, products, or sculptures) composed to form a single unit, designed to convey information visually and which is exposed to the public view. In cases where matter is displayed in a random or unconnected manner without an organized relationship, each such component shall constitute a sign.

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.

Small Wind Energy System: A device for generating electricity using wind power.

Small Municipal Separate Storm Sewer System, or Small MS4: Any MS4 that is not already covered by the Phase I MS4 stormwater program including municipally owned or operated storm sewer systems, State or federally-owned systems, such as colleges, universities, prisons, Maine Department of Transportation and Maine Turnpike Authority road systems and facilities, and military bases and facilities.

Solid Waste: Useless, unwanted or discarded solid material with insufficient liquid content to be free-flowing, including by way of example, and not by limitation, rubbish, garbage, scrap materials, junk, refuse, inert fill material and landscape refuse, but shall not include septic tank sludge or agricultural wastes.

Storage and/or Maintenance Facility: Land and buildings used for maintenance and service of private business' own fleet of vehicles used to run the business. Maintenance is limited to owner's vehicles. The facility may be used for storing vehicles and equipment and supplies.

Storm Drainage System: The Municipality's Regulated Small MS4.

Stormwater: Any Stormwater runoff, snowmelt runoff, and surface runoff and drainage; "Stormwater" has the same meaning as "Storm Water."

Stormwater Management Facilities: Any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures that are part of the Post-Construction Stormwater Management Plan for a Development.

Stream: A free-flowing body of water from the outlet of a great pond or the confluence of two perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within the shoreland area. This term shall also include Ferguson Brook, which is east of Old Pine Hill Rd. and runs through Hall's Pond between School St. and Blackberry Hill Rd., and Love Brook which is located north of Love Brook Rd. and runs through the intersection of School St. and Guinea Rd.

Street: An existing state, county, or town way or a street dedicated for public use and shown upon a plan duly approved by the Planning Board and recorded in the County Registry of Deeds or a street dedicated for public use and shown on a plan duly recorded in the County Registry of Deeds prior to the establishment of the Planning Board and the grant to the Planning Board of its power to approve plans. The term "street" shall not include those ways which have been discontinued or abandoned.

Street Improvements: Enhancements made to the public right of way that contribute to the walkability, aesthetics, and general welfare of the Town. Examples of street improvements include sidewalks, bike paths, benches, street trees, and street lights.

Street Screen: Landscaping or fencing that thoroughly limits visibility of surface parking lots and storage areas from public view. Street screens should be between 3.5 and 6 feet in height and constructed of a material matching the finishes of surrounding buildings. Street screens should have openings no larger than necessary to allow automobile and pedestrian access.

Structure: Anything constructed or erected, the use of which requires a fixed location on or in the ground, or an attachment to something having a fixed location on the ground, either permanently or temporarily, including buildings, commercial park rides and games, satellite receiving dishes, carports, porches, and other building features, but not including sidewalks,

fences, driveways, parking lots, and poles, wiring and other aerial equipment normally associated with service drops as well as guying and guy anchors.

Substantial Improvement: Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored before the damage occurred. For purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or for any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historical Places.

Substantial Start: Completion of 30 percent of a permitted structure or use measured as a percentage of estimated total cost.

Subdivision: See Subdivision Regulations of the Town of Berwick, Maine.

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.

Swimming pool: An outdoor artificial receptacle or other container, whether in or above the ground, used or intended to be used to contain water for swimming or bathing and designed for a water depth of 24 inches or more.

Temporary Sign: Any sign that is used only temporarily (30 days or less) and is not permanently mounted. Temporary signs cannot exceed 24 square feet in size (includes both sides) and shall not be illuminated. Temporary signs must visibly indicate the date that they were erected on the sign.

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 (Q), Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting.

Timber harvesting and related activities: Timber harvesting, the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate 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 term does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by

human activity. 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.

Undue Hardship:

1. That the land in question cannot yield a reasonable return unless a variance is granted;
2. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
3. That the granting of a variance will not alter the essential character of the locality; and
4. That the hardship is not the result of action taken by the applicant or a prior owner.

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.

Urbanized Area ("UA"): The areas of the State of Maine so defined by the latest decennial (2000) census by the U.S. Bureau of the Census.

Used Merchandise Sales: The indoor or outdoor sale of used articles, conducted for more than five consecutive days or for more than two weekends per year.

Variance: A variance is a relaxation of terms of this ordinance. Variances permissible under this ordinance are limited to dimensional and area requirements. No variance can be granted for the establishment of any use otherwise prohibited, nor shall a variance be granted because of the presence of non-conformities in the immediate or adjacent zones.

Vegetation: All live trees, shrubs, ground cover, and other plants including without limitation, trees both over and under four inches in diameter, measured at 4 1/2 feet above ground level.

Vehicle Sales: Any business which involves a parking or display area for the sale of new or used cars, trucks, motorcycles, campers, farm equipment, recreational vehicles, mobile homes, or similar products.

Veterinary Hospital or Clinic: A building used for the diagnosis, care and treatment of ailing or injured animals which may include overnight accommodations. The overnight boarding of healthy animals shall be considered a kennel.

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.

Warehousing; Storage; Distribution: Terminal facilities for handling freight with or without maintenance facilities.

Waste Facility: Any land area, structure, location, equipment or combination of them, including dumps, used for handling hazardous or solid waste, sludge or septage. A land area or structure does not become a waste facility solely because:

1. It is used by its owner for disposing of septage from his/her residence;

2. It is used by individual homeowners or lessees to open burn leaves, brush, dead wood and tree cuttings accrued from normal maintenance of their residential property, when such burning is permitted pursuant to 38 M.R.S.A., Section 599, Subsection 3; or

3. It is used by its residential owner to burn highly combustible domestic, household trash such as paper, cardboard cartons or wood boxes, when such burning is permitted pursuant to 38 M.R.S.A., Section 599, Subsection 3.

Water Body: Any great pond, river or stream.

Water Crossing: Any project extending from one bank to the opposite bank of a river, or 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.

Wetland Soils: The following soils, as described and identified in the Soil Survey of the County:

Biddeford mucky peat

Sulfihemists, frequently flooded

Chocorua peat

Vassalboro peat

Sebago peat

Vassalboro peat, ponded

Saco

Waskish peat

Wholesale Business: Establishments or places of business primarily engaged in selling merchandise to retailers; to industrial, commercial, institutional or professional business users, or to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to such individuals or companies.

Wireless Communications Facility: Any antenna, satellite dish, microwave dish or equipment used for receiving, relaying or transmitting radio, telephone, television, or any other electromagnetic based communication or data transfer, or any tower, pole or structure supporting such equipment.

Woody Vegetation: Live trees or woody, non-herbaceous shrubs.

Workforce Housing: Dwelling units that may be purchased or rented for year-round occupancy by a working household whose income is between 50% and 60% of the median income for the Town per most recent census data.

Yard: The area between a structure and the property boundary.

Yard Sale: The term "yard sale" shall include so-called garage sales, porch sales, tag sales, and the like, and they occur on no more than five consecutive days or for no more than two weekends a year.

ARTICLE III OFFICIAL LAND USE MAP

3.1 Official Land Use Map.

Districts are located and bounded as shown on the Official Land Use Map which together with overlay maps is hereby adopted by reference and is a part of this ordinance. The Aquifer Protection and Shoreland Overlay District boundaries are determined by the terms of the section creating that district, and any delineation of them on the Official Land Use Map shall be for reference only and shall not supersede or modify such boundaries as created in that section. See Section 14.9 for provisions regarding the Official Shoreland Zoning Map.

3.2 Certification of Land Use Map.

The Official Land Use Map is certified by the Town Clerk under the following words: "This is the Official Land Use Map referred to in Section 3.2 of the Land Use Ordinance of the Town of Berwick," together with the date of the adoption of this ordinance. The official copy shall be located in the office of the Town Clerk.

3.3 Changes of the Official Land Use Map.

If changes are made in the district boundaries or other matter portrayed on the Official Land Use Map such changes shall be made on the Official Land Use Map within 14 days after the amendment has been adopted together with an entry on the Official Land Use Map as follows:

"On *(insert date)* by official action of the Town of Berwick, the following change(s) was(were) made: *(insert brief description of the nature of change)*." Immediately beneath the entry the Town Clerk shall place his/her signature.

3.4 Replacement of Official Land Use Map.

In the event that the Official Land Use Map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the governing authority may by resolution adopt a new Official Land Use Map. The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official Land Use Map, but no such corrections shall have the effect of amending the Official Land Use Map.

ARTICLE IV ESTABLISHMENT OF DISTRICTS

4.1 Classes of Districts.

For the purpose of this ordinance, the town is hereby divided into the following classes of districts.

A. Zoning Districts.

1. Urban Residential Districts to be known as "R-1" Districts
2. Transition Residential Districts to be known as "R-2" Districts
3. Rural Residential-Farm Districts to be known as "R-3" Districts
4. Commercial/Industrial Districts to be known as "C/I" Districts
5. Rural Commercial/Industrial District to be known as RC/I Districts

B. Overlay Districts.

Aquifer Protection to be known as "AP" District
Village Overlay District

Shoreland Zone Districts:

- A. Shoreland Commercial Industrial to be known as SC/I District
- B. Resource Protection to be known as "RP" District
- C. Limited Residential to be known as LR District
- D. Stream Protection to be known as SP District

4.2 Rules Governing District Boundaries.

Unless otherwise indicated, the boundaries of districts are property lines, the centerlines of streets and roads and rights of way. Where uncertainty exists as to the exact location of district boundary lines, the Board of Appeals shall be the final authority as to location.

A. Sources for the exact delineation of the Special Flood Hazard areas shall be the Berwick Flood Insurance Rate Map (effective date August 5, 1991) prepared by the Federal Emergency Management Agency, Community #230144.

B. Sources for the exact delineation of the Aquifer Protection District shall be the Maine Geological Survey "Sand and Gravel Aquifers, Open File No. 98-125, 98-126, 98-127, 1998."

4.3 Rules Governing When One Lot is Located in Two Different Districts.

Except the boundaries of the overlay districts, the following shall control when a lot is divided by a district boundary.

A. On lots of two acres or less in area, the lot shall be used as if the entire lot were in the district which comprises the larger portion.

B. On lots larger than two acres, the district regulations shall be followed in each portion.

ARTICLE V GENERAL PROVISIONS

5.1 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, moved, or altered unless in conformity with all of the regulations herein specified for the district in which it is located, unless a variance is granted.

5.2 Non-Conformance.

A. General.

1. Continuanace, Enlargement, Reconstruction. Any non-conforming use or non-conforming structure may be continued but may not be extended, reconstructed, enlarged, or structurally altered except as specified below.

2. Transfer of Ownership. Non-conforming structures, non-conforming lots of record, and non-conforming 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.

3. Restoration or Replacement. This ordinance allows the normal upkeep and maintenance of non-conforming uses and structures; repairs, renovations, or modernizations which 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.

Any non-conforming use or structure which is hereafter damaged or destroyed by fire or any cause other than the willful act of the owner or his/her agent, may be restored or reconstructed within one year of the date of said damage or destruction, provided that:

a. Any non-conforming structure shall not be enlarged except in conformity with this ordinance and the Maine State Plumbing Code.

b. Any non-conforming use shall not be expanded in area.

Nothing in this section shall prevent the demolition of the remains of any building so damaged or destroyed.

4. See Section 14.12 for nonconformities within the Shoreland Zone

B. Non-Conforming Use.

1. Resumption prohibited. A building or structure, or use of land in 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, even if the owner has not intended to abandon the use. The time requirement of this section shall not apply to mineral extraction operations which are governed by the provisions of Section 8.10.

2. A Structure Non-conforming As to Use. Except for single family dwellings, a building or structure, non-conforming as to use, shall not be enlarged unless the non-conforming use is terminated. Single family dwellings, which are non-conforming uses, may be enlarged as long as the dimensional requirements of the district in which they are located are met.

A non-conforming use or part of a building or structure shall not be extended throughout other parts of the building or structure unless those parts of the building or structure were manifestly arranged or designed for such use prior to the adoption of this ordinance, or of any amendment making such use non-conforming.

3. Change of Use. An existing non-conforming use may be changed to another non-conforming use provided that the proposed use is equally or more appropriate to the district than the existing non-conforming use, and the impact on adjacent properties is less adverse than the impact of the former use as determined by the Appeals Board. The case shall be heard as an administrative appeal. The determination of appropriateness shall include consideration of the probable changes in traffic volume and type, parking, noise, potential for litter, wastes or by-products, fumes, odors, or other nuisances likely to result from such change of use. The performance standards in Article VII of this ordinance shall apply to such requests to establish new non-conforming uses.

4. Use of Land. A non-conforming use of land may not be extended into any part of the remainder of a lot of land. A non-conforming use of land which is accessory to a non-conforming use of a building shall be discontinued at the same time the non-conforming use of the building is discontinued.

In the case of earth removal operations, the removal of earth may not be extended as a non-conforming use beyond the required setback lines of the specific parcel upon which such operations were in progress when such use became non-conforming. Adjacent parcels in the same or different ownership shall not be eligible for exemption under the non-conforming use provisions unless earth removal operations were in progress on these parcels before these provisions were enacted. The provision of required off-street parking for an existing non-conforming use shall not be considered the expansion of said use.

C. Non-Conforming Structures. (Pertaining to dimensional requirements. Applications regarding non-conforming use shall be reviewed under the provisions above.)

1. Enlargements Controlled. A non-conforming structure shall not be added to or enlarged unless such addition or enlargement conforms to all the regulations of the district in which it is located, or a variance is obtained, except that dwellings in the residential districts which are situated entirely within the front setback area may be enlarged provided such enlargement does not encroach upon the existing front setback or upon any other required setback areas of the lot.

The addition of an open patio with no structures elevated above ground level shall not constitute the expansion of a non-conforming structure.

The addition of steps or the enclosure of an existing porch shall not constitute the expansion of a non-conforming structure. But the addition of a deck shall constitute the expansion of a non-conforming structure and shall meet all the dimensional requirements of this ordinance.

Construction or enlargement of a foundation beneath the existing structure shall not be considered an expansion of the structure provided that the structure and new foundation are 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 5.2.C.4, that the completed foundation does not extend beyond the exterior dimensions of the structure; and that the foundation does not cause the structure to be elevated by more than three additional feet.

2. Discontinuance. Discontinuance of the use of a legally existing non-conforming structure shall not constitute abandonment of the structure. Conforming use of the structure may be commenced at any time.

3. Lack of Required Parking or Loading Space. A building or structure which is non-conforming as to the requirements for off-street parking and/or loading space shall not be enlarged, added to, or altered unless off-street parking and/or loading space is provided to bring parking and/or loading space into conformance with the requirements of this ordinance for both the addition or alteration and for the original building or structure, or a variance is obtained.

4. Relocation. A nonconforming 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 Board of Appeals, 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 other structures on the property and on adjacent properties, 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.

5. Replacement. A nonconforming structure on a non-conforming lot of record may be replaced or reconstructed provided that:

- a. The new structure is reconstructed or replaced within the footprint of the previous structure, or that the new structure is located on the lot so that the existing non-conformity is improved upon and not increased in any way.
- b. In order to replace or reconstruct a non-conforming structure on a nonconforming lot of record a permit must be obtained from the Code Enforcement Officer prior to any demolition or building removal and the structure must be replaced no less than 180 days from receipt of the permit.
- c. Any manufactured housing proposed for replacement must be a HUD-code home as defined under Manufactured Housing in the Berwick land use ordinance.

D. Non-conforming Lots of Record.

1. Vacant. A vacant non-conforming lot of record may be built upon provided it is not contiguous with any other vacant lot in the same ownership. A vacant lot of record does not have to meet area or frontage requirements of this ordinance. However, all other dimensional standards of this ordinance shall be met unless a variance is obtained from the Board of Appeals. Buildings shall be limited to a single family or two-family dwelling unit unless the property has frontage on Route 9 or Route 4 and the use is permitted in the pertinent zoning district.

2. Built Lots. A non-conforming lot of record that was built upon prior to the enactment or subsequent amendment of the ordinance is subject to the following restrictions. The structure(s) may be repaired, maintained, or improved, and may be enlarged in conformity with all dimensional requirements of this ordinance except lot area, lot width, or lot frontage. If the proposed enlargement of the structure(s) cannot meet the dimensional requirements of this ordinance a variance shall be obtained from the Board of Appeals.

3. Contiguous Built Lots. If two or more contiguous lots or parcels are in 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, providing 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.

4. 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 either or both of these lots do not individually meet the dimensional requirements of this ordinance or subsequent amendments, and if two or more of the lots are vacant or contain only an accessory structure, the lots shall be combined to the extent necessary to meet the dimensional standards, except where rights have vested, or the lots have frontage on parallel streets and state laws are complied with.

E. Vested Rights.

Non-conforming use rights cannot arise by the mere filing of a notice of intent to build, and application for building permits, or an application for required state permits and approvals. Such rights arise when actual construction has begun, or in the case of pending applications, when the review process on a complete application commences. Such construction must be legal at the time it is commenced and the owner must be in possession of and in compliance with all validly issued permits, both state and local. The right to develop a non-conformity shall automatically be lost, even if the owner or agent did not intend to abandon the project, if such development or construction is not substantially complete within two years of the adoption or amendment of this ordinance.

5.3 Mixed Use.

Mixed use means the development of a lot, building, structure or portion thereof which combines a residential and non-residential use. Mixed uses are allowed only under the following conditions:

1. Each use must comply with all performance standards of this ordinance applicable to that use.
2. Where different dimensional requirements apply to the different uses, the more restrictive requirements shall apply to the entire mixed use.
3. If any of the uses requires conditional use approval, the Planning Board shall consider the impacts and effects of the entire mixed use when the Board applies the conditional use approval criteria and when the Board determines what limiting conditions, if any, are required.
4. Where there is any conflict or inconsistency between any of the standards of this ordinance as applied to the different uses, the more restrictive standards shall govern the entire mixed use.
5. A mixed use shall meet the minimum lot size for a residential use plus half the minimum lot size for each additional commercial/industrial use.
6. Mixed uses located in the Village Overlay have no minimum lot size required although Shoreland Zoning standards are still applicable.
7. Industrial uses may not co-locate on the same lot with residential uses.

ARTICLE VI DISTRICT REGULATIONS

6.1 Basic Requirement.

Permitted uses and conditional uses in all districts shall conform to all applicable specifications and requirements. A plumbing permit, building permit, and/or Certificate of Occupancy shall be required for all buildings, structures, uses of land and buildings, and sanitary facilities, according to the provisions of this ordinance with the following exceptions: repairs, replacement, and/or normal maintenance not requiring structural elements, decorative changes in existing structures or buildings, patios, fences, driveways (not to exceed lot coverage) and yard sales provided that the activity is in conformance with federal, state or local laws and does not involve any physical modifications or changes requiring a permit under this ordinance.

See Section 14.13 for district regulations in the Shoreland Zone.

6.1.2 Omitted Uses.

In the event that a proposed use is not specifically identified in the tables, the Code Enforcement Officer shall select the listed use which most closely resembles the proposed use in impact and intensity. (A useful guide for examining nonresidential uses is the “North American Industry Classification System.”)

In cases where no listed use is reasonably construed to closely resemble the proposed use, the Code Enforcement Officer may determine that there is no listing for the proposed use and that therefore it is not permitted in any zoning district.

6.2 Land Use District Regulations.

Land uses permitted in each district, in conformance with the General Performance Standards in Article VII and, where appropriate, the Specific Performance Standards of Article VIII are shown in the following table.

LAND USE TABLE

KEY: **P - Permitted Use - Permit Required**
 X - Not Permitted
 C - Conditional Use, May Require Site Plan Review
 A - Allowed Without a Permit

	R1	R2	R3	C/I	RC/I	AP	LR	SC/I	RP	SP
RESIDENTIAL										
Single-Family Dwelling, including driveways	P	P	P	P	C	P	P	X	X	P
Cluster Development	X	C	C	X	X	X	X	X	X	X
Community Living Arrangement	P	P	P	P	C	P	X	X	X	X
Congregate Housing	C	C	C	C	C	X	X	C*	X	X
Elderly Housing	C*	C*	X	C*	X	X	X	X	X	X
Mobile Home Parks	C	C	X	X	X	X	X	C*	X	X
Multi-Family Dwelling	C	C	X	C	C	X	X	X	X	X
Owner Occupied Apartment	P	P	P	P	C	C	C	X	X	X
Two-Family Dwelling, including driveways	P	P	P	P	C	P	P	X	X	P
Conversions of seasonal residences to year-round residences	LPI	LPI	LPI	LPI	LPI	LPI	LPI	LPI	LPI	LPI
INSTITUTIONAL/PUBLIC										
Cemetery	C	C	C	X	X	X	X	X	X	X
Church, Parish House	C	C	C	C	C	X	X	C	X	X
Club Facility	C	C	C	C	C	C	C	C	X	X
Educational Facility	C	C	C	C	C	X	C	C	X	X
Daycare Home	C	C	C	C	C	C	X	C	X	X
Medical Care Facility	C	C	C	C	C	X	X	C	X	X
Municipal Facility	C	C	C	C	C	C	C	C	X	X
Museum	C	C	C	C	C	C	C	C	X	X
Public Facility	C	C	C	C	C	C	C	C	X	X
Public Utility Facility	C	C	C	C	C	C	C	C	C	C
Essential services										
A. Roadside distribution lines (34.5kV and lower)	A	A	A	A	A	A	A*	A*	P*	P*
B. Non-roadside or cross-country distribution lines involving ten poles or less in the shoreland zone	A	A	A	A	A	A	P	P	C*	C*

	R1	R2	R3	C/I	RC/I	AP	LR	SC/I	RP	SP
C. Non-roadside or cross-country distribution lines involving eleven or more poles in the shoreland zone	A	A	A	A	A	A	C	C	C*	C*
D. Other essential services	A	A	A	A	A	A	C	C	C*	C*
Service drops, as defined, to allowed uses	A	A	A	A	A	A	A	A	A	A
COMMERCIAL										
Automobile Service/Motorcycle Repair Business	C*	C	C*	C	C	X	X	C	X	X
Bed and Breakfast	C	C	C	C	C	C	X	C	X	X
Boardinghouse	C	C	C	C	C	X	X	C	X	X
Bottle Club	X	C*	X	C	C	X	X	C	X	X
Campground	X	C	C	X	X	C	C	X	X	C
Commercial Mini-Storage	X	X	C*	X	C	X	X	X	X	X
Communication Tower*	X	C	C	C	C	C	X	X	X	X
Daycare Center	C	C	C	C	C	X	X	C	X	X
Drug Store	C	C	C	C	C	X	X	C	X	X
Finance, Insurance and Real Estate	C	C	C	C	C	C	X	C	X	X
Fringe Financial	X	X	X	X	C*	X	X	X	X	X
Function Hall	C	C	C	C	C	C	X	C	X	X
Golf Course	X	C	C	X	C	C	X	X	X	X
Hotel	C*	C*	C*	C	C	X	X	C	X	X
Motel	X	X	X	X	C	X	X	X	X	X
Kennels	X	C	C	X	C	X	X	X	X	X
Marina	C	C	C	C	C	X	C	C	X	X
Medical Office	C	C	C	C	C	X	X	C	X	X
Medical Marijuana Cooperative	X	X	X	X	C*	X	X	X	X	X
Medical Marijuana Dispensary	X	X	X	C*	X	X	X	C*	X	X
Medical Marijuana Production Facility	X	X	X	X	C*	X	X	X	X	X

	R1	R2	R3	C/I	RC/I	AP	LR	SC/I	RP	SP
Neighborhood Convenience Store	C	C	C	C	C	C	X	C	X	X
Professional Office	C	C	C	C	C	C	X	C	X	X
Recreation Facility	C	C	C	C	C	C	X	C	X	X
Restaurant	C	C	C*	C	C	X	X	C	X	X
Retail Business	C	C	C*	C	C	X	X	C	X	X
Retail Use Marijuana+	X	X	X	X	X	X	X	X	X	X
Service Business	C	C	C	C	C	X	X	C	X	X
Storage and/or Maintenance Facility	X	C	C	X	C	X	X	X	X	X
Wholesale Business	C*	C	C*	C	C	X	X	C	X	X
Wireless Communications Facility	C*	C	C	C	C	C	C*	C*	X	X
Vehicle Sales	C	C	C*	X	C	X	X	C	X	X
INDUSTRIAL										
Auto Graveyard/Junkyard/Auto Recycling	X	X	X	X	C	X	X	X	X	X
Laboratory	C	X	X	C	C	X	X	C	X	X
Laboratory Research Facility	X	X	X	C	C	X	X	C	X	X
Low Impact Industrial	X	C*	C*	C*	C*	X	X	X	X	X
Industrial	X	X	X	X	C	X	X	X	X	X
Mineral Industry	X	C	C	X	C	C	C	X	X	X
Mineral Extraction	A	A	A	A	A	A	A*	A*	A*	X
Sawmill	X	C	C	X	C	C	X	X	X	X
Warehousing; Storage; Distribution	X	X	X	X	C	X	X	X	X	X
Waste Facility	X	X	X	X	C	X	X	X	X	X

	R1	R2	R3	C/I	RC/I	AP	LR	SC/I	RP	SP
MISCELLANEOUS										
Agriculture	P	P	P	P	P	C	C	X	C	C
Animal Husbandry	X	C	P*	X	C	C	C	X	C	X
Forest Management	P	P	P	P	P	P	P	X	P	P
Private Pond with or without a dam	P	P	P	P	P	P	X	X	X	X
Timber Harvesting*	P	P	P	P	P	P	P	X	P	P
Non-intensive recreational uses not requiring structures such as hunting, fishing and hiking, and non-motorized boating	A	A	A	A	A	A	A	A	A	A
Disturbed area greater than 1 acre*	P	P	P	P	P	P	P	P	P	P
Aquaculture	-	-	-	-	-	-	C	C	C	A
Small, non-residential facilities for educational, scientific, or nature interpretation purposes	C	C	C	C	C	C	P	P	C	C
Public and private recreational areas involving minimal structural development	C	C	C	C	C	C	C	P	C	C
Individual private campsites	C	P	P	X	P	P	P	X	P	P
Motorized vehicular traffic on existing roads and trails.	A	A	A	A	A	A	A	A	A	A
Clearing or removal of vegetation for activities other than timber harvesting	A	A	A	A	A	A	A	A	P*	P
Fire prevention activities	A	A	A	A	A	A	A	A	A	A
Wildlife management practices	A	A	A	A	A	A	A	A	A	A
Soil and water conservation practices	A	A	A	A	A	A	A	A	A	A
Surveying and resource analysis	A	A	A	A	A	A	A	A	A	A
Emergency operations	A	A	A	A	A	A	A	A	A	A
Structures accessory to allowed uses	P	P	P	P	P	P	P	A	C	C

	R1	R2	R3	C/I	RC/I	AP	LR	SC/I	RP	SP
Piers, docks, wharfs, bridges and other structures and uses extending over or below the normal high-water line or within a wetland										
A. Temporary	-	-	-	-	-	-	P*	P*	P*	P*
B. Permanent	-	-	-	-	-	-	C	C	C	C
Private sewage disposal systems for allowed uses	LPI	LPI	LPI	LPI	LPI	LPI	LPI	LPI	LPI	LPI
Road construction	P	P	P	P	P	P	C	C	X*	C
Land management roads	A	A	A	A	A	A	A	A	C	A
Parking facilities	C	C	C	C	C	C	C	C	X*	X
Filling and earth moving of <10 cubic yards	A	A	A	A	A	A	A	A	P	P
Filling and earth moving of >10 cubic yards	P	P	P	P	P	P	P	P	C	C
Signs	A	A	A	A	A	A	A	A	A	A
**ACCESSORY USES										
Home Occupation	P	P	P	P	P	P	C	C	X	X
Outdoor Wood Furnace*	C	P	P	C	P	P	P	C	X	X
Small Wind Energy System	C	C	C	C	C	C	C	C	X	C
Yard Sale	A	A	A	A	A	A	A	A	X	X

*** Indicates this use has specific performance standard in Article VII that must be met.**

+ Retail Use Marijuana is prohibited until the laws at the State level are determined, after that point, the Planning Board will review the Retail Marijuana definition and Land Use Table.

6.3 Dimensional Requirements.

Lots and principal buildings in all districts shall meet or exceed the following minimum requirements. If more than one principal building is constructed on a single parcel of land all dimensional requirements shall be met separately for each principal building. Additional requirements may be imposed by other provisions of this ordinance.

DIMENSIONAL REQUIREMENTS TABLE

<u>REQUIREMENTS</u>	<u>R-1</u>	<u>R-2</u>	<u>R-3</u>	<u>C/I</u>	<u>RC/I</u>	<u>AP</u>	<u>VILLAGE</u>
Minimum Lot Size with Public Sewer and Water in square feet	10,000	20,000	90,000	10,000	50,000	20,000	See Note 10
Minimum Lot Size with Septic in square feet	20,000	60,000	90,000	20,000	90,000	120,000	See Note 10
Minimum Lot Width in feet	100	150	300	100	200	300	See Note 10
Minimum Frontage in feet	100	150	300	100	200	300	See Note 10
Minimum Front Yard Setback in feet	25	50	75	25	50	75	See Note 10
Minimum Side Yard Setback in feet	25	25	50	15	25	50	See Note 10
Minimum Rear Yard Setback in feet	25	25	50	25	25	50	See Note 10
Maximum Building Height in feet	35	35	35	45	45	35	45
Maximum Lot Coverage percentage	50	35	20*	80	80	20	See Note 10
Shoreline Setback from River or Great Pond							25
Shoreline Setback from Wetlands and Streams							See Note 10
Shoreline Frontage							See Note 10

Notes:

1. The setback may be reduced to the average of like setbacks of the exiting structures on abutting properties.
2. The setback along a railroad spur may be waived for loading facilities that require rail access.
3. Two-family dwellings require twice the lot size as single-family dwellings. Multifamily dwellings require a minimum lot size which equal that required for the equivalent number of single family dwelling units.

4. No land in a deeded right of way may be used to meet any of the dimensional requirements of this ordinance.
5. The frontage requirement for lots on curves with a centerline radius of 100 feet or less may be reduced by 20 percent provided the lot width requirements are met.
6. For all structures side and rear setbacks may be reduced by the percentage that the non-conforming lot is less than the requirement.
7. For lots with public water and sewer in the R-2 District the front setback requirement may be reduced to 25 feet.
8. Additions to existing non-conforming buildings may be built to meet the existing line of non-conformity but may not be less than ten feet from a side or rear property line. However the non-conforming portion of the building shall not expand by 30 percent or more in volume or floor area during the lifetime of the structure. Average of the abutters (footnote #1 above) would apply if this average was less than ten feet.
9. One acre equals 43,560 square feet or 4,840 square yards.
10. All uses within the Village Overlay District are exempt from dimensional requirements of the underlying C/I or R1 District and subject to the requirements established in Section 6.4. Uses within the Village Overlay District that are located in the Shoreland Zoning District are subject to all applicable dimensional requirements of the underlying Shoreland zone pursuant to Section 14.15.
11. If more than one single family dwelling is located on a single lot, the lot size shall equal that required for the equivalent number of single family dwelling units. The dwelling units shall be placed on the lot and separated from one another in such a manner that if the lot were divided each dwelling unit would meet all dimensional requirements.

* Lots containing only commercial or industrial uses may be allowed a maximum lot coverage percentage of 50%.

6.3.1 Residential Growth Limitation Provisions.

- A. Within the R-3 District, the number of residential building permits issued within any given subdivision during any calendar year, commencing the effective date of this ordinance amendment shall be limited to three (3), except as noted in Section 6.3.1.E below.
- B. Within the R-2 District the number of residential building permits shall be limited to 20 permits in any given subdivision within any given calendar year, if such subdivision is served by public water and sewer service (See Section 7.10, Sanitary Provisions and 7.19, Water Supply). The Planning Board may require the phasing of a project according to Section 13.6 of the Berwick Subdivision Regulations. Any subdivision within the R-2 District and not served by both water and sewer will be limited to three (3) building permits per calendar year per subdivision from the effective date of this ordinance amendment except as noted in Section 6.3.1.E., below.

- C. Within the RC/I District, the number of residential building permits issued within any given subdivision during any calendar year commencing the effective date of this ordinance amendment shall be limited to three (3), except as noted in Section 6.3.1.E., below.
- D. For those subdivisions either approved or pending (according to MRSA, Title 1, section 302) as of the effective date of this ordinance amendment, the limit on the number of permits to three (3) shall not apply, however those subdivisions either approved or pending as of the effective date of this ordinance amendment will be subject to a limit of nine (9) permits per calendar year.
- E. For determining number of permits to be issued; if a parcel is split or conveyed into 2 parcels 3 years prior to application for subdivision, the number of permits will be issued based on the parent parcel.

6.4 Village Overlay District - Form-Based Code Districts

The purpose of Form-Based Code is to:

- Allow for a diversity of appropriate and compatible uses within a zoning district
- Provide a more concise process for design, review and approval of structures.
- Deliver a development outcome that is more consistent with a traditional pedestrian oriented street development pattern

Berwick's Form-Based Code zoning district is the Village Overlay District which overlays portions of the R1, SC/I and C/I Zoning Districts.

FIGURE 1. – Map of Village Overlay District - See the Town of Berwick's Zoning Map at berwickmaine.org/maps as the map may be amended from time to time.

6.4.1 General: Purpose and Intent

- A. The Village Overlay District is intended to promote the development of the former tannery site, which is bounded by Sullivan Street, Wilson Street and School Street. The establishment of the Village Overlay District is consistent with the vision presented in the Comprehensive Plan which includes the Berwick Downtown Vision Report and Implementation Plan.
- B. The Village Overlay District will utilize the former tannery site, transforming it into a new village center that repurposes older buildings and allows for new buildings that will offer economic and commercial opportunities while also recognizing the Town's industrial past. The reuse of the industrial buildings along with new buildings, a new street, and new public and private spaces will become the foundation of a thriving downtown.
- C. The Form-Based Code establishes standards for use and design of new and existing buildings, including size, height and required features as well as criteria related to roads, sidewalks, parking areas and open space.

6.4.2 Village Overlay District

A. Objectives

1. The Village Overlay District will improve and expand Berwick's downtown and provide connections to the open spaces and adjacent residential neighborhoods.
2. The Village Overlay District will allow for repurposing of existing former industrial buildings for commercial and residential uses, thereby allowing for a core downtown area of higher density, mixed use, buildings including low-impact industry, offices, retail and other commercial businesses and multifamily housing.
3. Continuous open space (known as a greenway) will run through the former tannery site connecting the recreational river area and the downtown neighborhoods to the community open space near the former Estabrook School.
4. The Village Overlay District will have a tight network of streets, including a new main street, with wide sidewalks, street trees and buildings set close to the street or with frontage on pleasing outdoor public spaces. A greenway connects public open spaces and the downtown to adjacent neighborhoods.
5. A wide range of residential buildings; including single-family, two-family, town houses or row houses and apartment houses will be allowed in the district.

6.4.2.1 Design Standards

A. Key Design Features of the Village Overlay District:

- 3 to 4 story mixed use buildings on Main Street with front façade detailing
- Active interaction between public and private spaces
- Increased density
- Increased availability of on-street parking
- Wide sidewalks
- Street trees
- Small off-street parking areas
- Public commons, outdoor spaces for restaurants and open space for civic activities
- Well defined corner buildings at the Main Street intersections with Wilson and Sullivan Streets.
- Greenway connectivity between the downtown, the river and surrounding neighborhoods
- Underground power and utilities

6.4.2.2 Main Street Design Standards

*Refer to Figure 2 and Figure 3

The new street to be designated Main Street shall run east to west through the former tannery site, connecting to School Street at its eastern end and to Sullivan Street, approximately opposite of Eleanor's Street, at its western end.

Minimum Right-of-Way Width	60 feet
Curb face to curb face	40 feet
Minimum Traveled Way Width	24 feet total paved driving lanes (12-feet for each direction) Refer to Figures 2 and 3
Parking Lanes	Parallel, 8 feet wide, paved, total length of street except for pedestrian crossings and intersections
Minimum Sidewalk Width	8 feet
Minimum Grade	.5%
Minimum Angle of Street Intersections with School and Sullivan Streets	90 degrees
Pedestrian crossing	<ul style="list-style-type: none">• Raised: approximately same height as the curb• Use pavers or material different in color and texture than the travel lanes but must be ADA-friendly.• Provide bump outs at pedestrian crossings to shorten length of travel from sidewalk to sidewalk.• Granite curbing
Landscaping	Provide street trees every 25 feet on center in tree grates or as necessary to allow for ample growth
Street Lighting	Lighting fixture types to be similar along Main Street, School Street and Sullivan Street See Figure 6.4.2.4 Street Lighting
Access	To minimize curb-cuts, access to parking areas and driveways servicing buildings both new and existing, shall be shared.
Utilities	All utilities, including power, shall be installed underground.

FIGURE 2.- MAIN STREET SECTION A- without planting strip along road

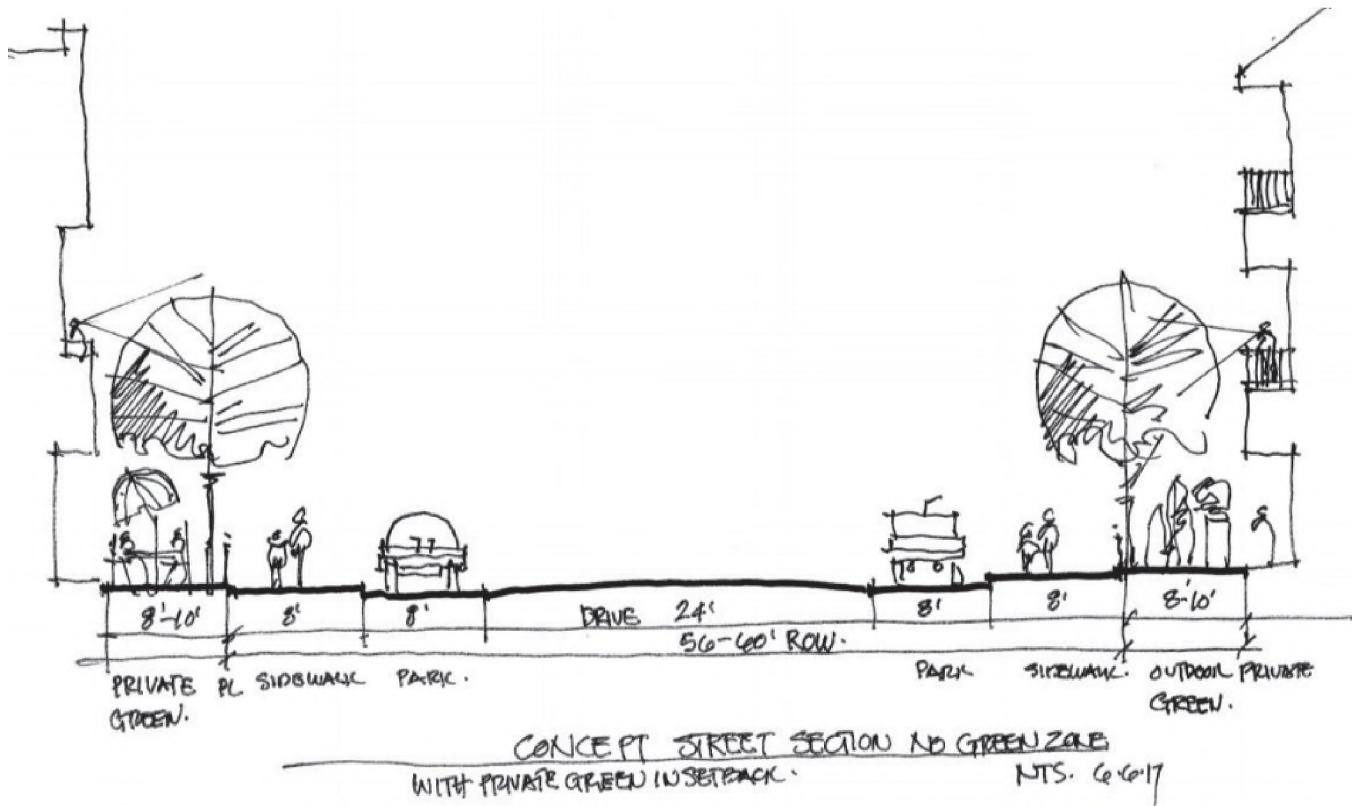
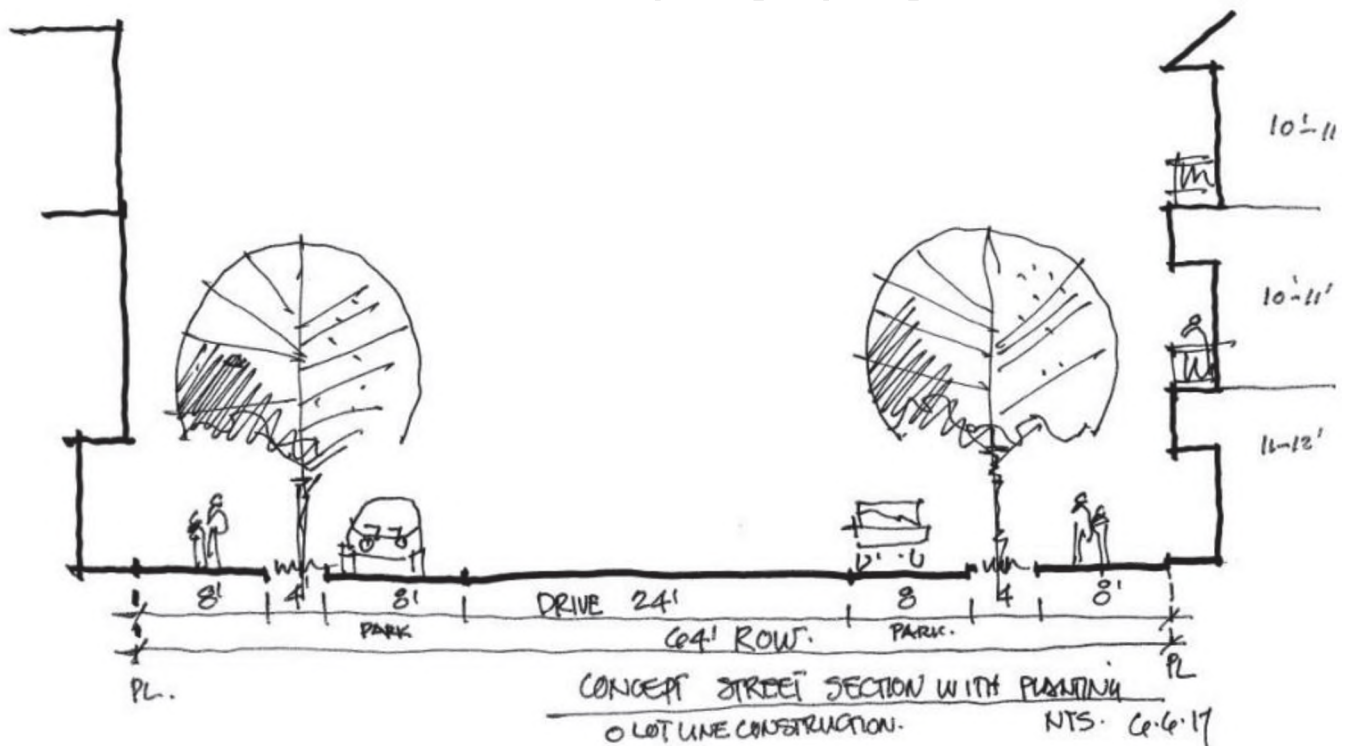


FIGURE 3. MAIN STREET SECTION B- with planting strip along road



6.4.2.3 Additional Streets


As redevelopment occurs within the former tannery site, portions of Sullivan Street, Wilson Street and School Street that abut the former tannery site shall be subject to new development and design standards. As parcels that abut the above-mentioned streets and others within the district are redeveloped, the following design standards shall apply

<u>Minimum Sidewalk Width</u>	<u>6 feet</u>
<u>Pedestrian crossings</u>	<ul style="list-style-type: none"> • Use materials different in color and texture than the travel lanes but must be ADA-friendly. • Granite curbing
<u>Access</u>	To minimize curb-cuts, access to parking areas and driveways servicing buildings both new and existing, shall be shared.
<u>Landscaping</u>	Provide street trees every 25 feet on center in tree grates or as necessary to allow for ample growth
<u>Street Lighting</u>	Lighting fixture types to be similar along Main Street, School Street and Sullivan Street See Figure 6.4.2.4 Street Lighting
<u>Utilities</u>	Utilities, including power, shall be located underground.

6.4.2.4 Street Lighting

All new street lighting added along Main Street, Sullivan Street, Wilson Street and School Street shall be in a style similar to Figure 4 below. Street lighting along Main Street must also include accessory arms for hanging banners and decorations.

FIGURE 4. - CONCEPT SITE LIGHTING-

Lighting Type	
 <p>Gooseneck</p>	Gooseneck Street Lamp
	LED
	Black post with candy cane arm
	*Approved light fixture for Main Street
	All other site and exterior building lighting are subject to Planning Board approval.
	All exterior lights shall have full cut off/fully shielded luminaries approved by the International Dark-Sky Association.

6.4.2.5 Open Space

- A. Redevelopment of the former tannery site requires 25% of the total site (comprised of the area bounded by Wilson Street, Sullivan Street, Saw Mill Hill and School Streets, excluding the area between Back Street, Sullivan Street and Saw Mill Hill) to be open space. This open space will be a combination of larger spaces suitable for public/civic events, greenways and smaller more intimate spaces. Refer to Section 6.4.4 Open Space/Greenways.

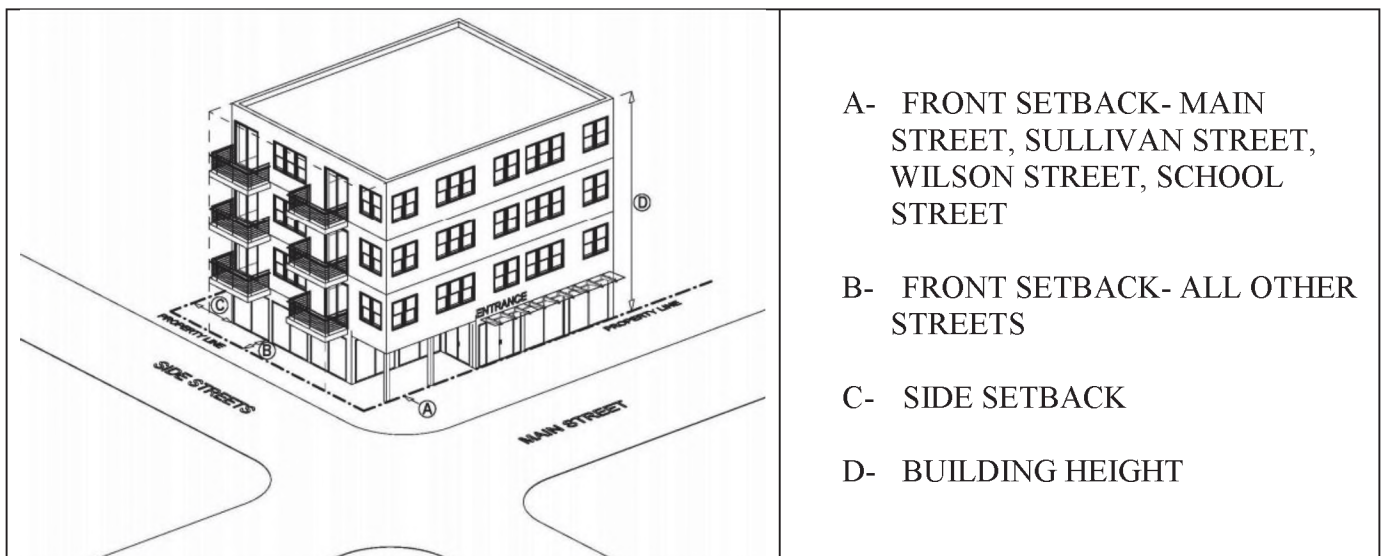
6.4.2.6 Building Standards and Features

- A. New buildings shall be oriented to the street on which they have frontage, with large windows, covered entries, easy pedestrian access, and little to no setback from the street for business/commercial uses. Buildings with first floor residential units shall be set back with small yards and/or porches and primary entrances facing the street. While not required, garages are encouraged for residential structures but shall be located in back of or to the side of the buildings.
- B. Building designs and construction shall meet all current energy codes and strive for near net zero. See Section 6.4.6 Energy and Sustainability.
- C. Best practices for storm water management and low-impact design are required. See Section 6.4.7 Storm water.
- D. Building materials, including siding and trim, shall be reviewed and approved by the Planning Board and shall be found consistent with the Design Guidelines as adopted by the Town.
- E. Residential uses on the first floor of a building shall be allowed in nonconforming structures in existence prior to May 12, 2015. However, first floor residential uses of nonconforming structures shall not be allowed if the building's footprint is expanded by 30% or more.
- F. All first floor residential uses in new buildings with frontage on the new main street shall be:
 - Reviewed by the Planning Board as a conditional use; and
 - Consistent with the terms of the Comprehensive Plan, which includes the Berwick Downtown Vision Report and Implementation Plan.

6.4.3 Dimensional Requirements

The following Figures and Tables set forth the dimensional requirements and design standards for structures, parking and external elements within the Village Overlay District.

Figure 5: VILLAGE OVERLAY DISTRICT BUILDING PLACEMENT



BUILDING PLACEMENT (PRINCIPAL BUILDING)		
Front Setback: Main Street, Sullivan Street, Wilson Street and School Street	0 feet to 5 feet setback for non-residential uses except for restaurants which propose outdoor dining which shall have a front setback of between 10 and 15 feet. 5 feet to 15 feet setback for residential uses depending on whether porches or front yards or both are proposed.	A
Front Setback: All other streets	Equal to the average setback for existing buildings within the same block.	B
Front Setback, Secondary Street: (Corner Lot)	0 feet to 10 feet setback for non-residential uses except for restaurants which propose outdoor dining which shall have a setback between 10 and 15 feet. 5 to 10 feet for residential uses	B
Side Setback:	0 to 5 feet (2)	C
Rear Setback:	10 feet minimum (2)	
Frontage Build out:	75% minimum at front setback	

Notes:

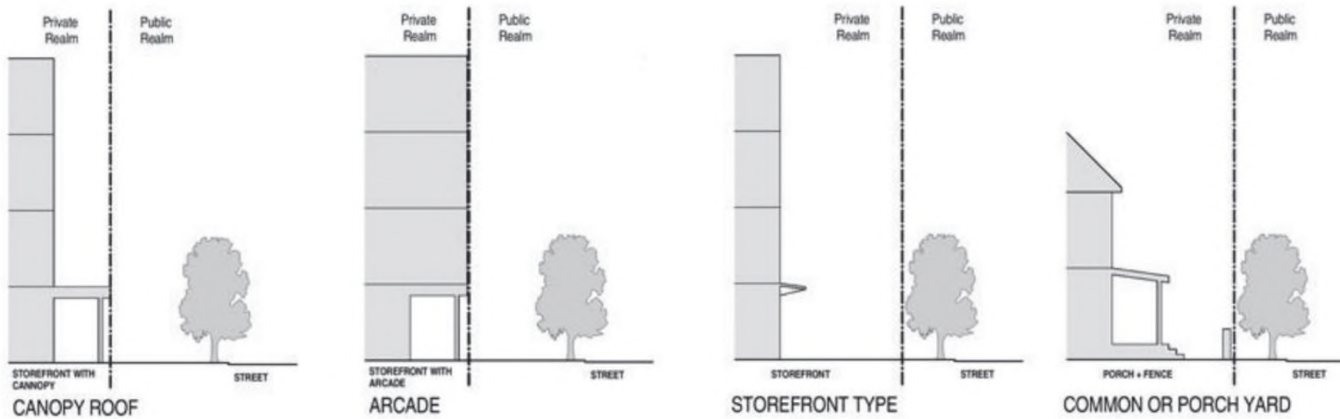
- (1) Building height shall not exceed immediately adjacent existing residential buildings by more than one story unless the existing building will be separated from the proposed building by more than 50 feet.
- (2) When a building is constructed adjacent to an existing single-family residence, the applicable side or rear setbacks shall not be less than 10 feet.

LOT OCCUPATION		
Maximum lot coverage	95%	
Lot Width	18 feet minimum, 150 feet maximum	

BUILDING FORM (PRINCIPAL BUILDING)		
Maximum building footprint	15,000 square feet	
Building Height:	2 story minimum, maximum of 4 stories/45 feet excluding unlivable attic space or as approved by Berwick Fire Department (see Note (1) above)	D
Entries	Primary entry door is encouraged along ground story facade facing the street on which the building has frontage.	
Façade Windows	20%-70% - first floor commercial uses must have 70% except for professional offices or financial or insurance services offices	
Front Façade Wall	Blank lengths of wall exceeding 12 linear feet are prohibited.	
Roof type	Gable, hip, flat	

BUILDING PLACEMENT (ACCESSORY)	
Front setback:	Principal building setback + 20 feet at minimum
Side setback:	0 feet minimum
Rear setback:	5 feet minimum

FIGURE 6: BUILDING SECTION- FRONTAGE TYPES



EXTERNAL ELEMENTS	
Fencing (residential):	A front yard fence, a minimum of 2 feet and a maximum of 4 feet in height is encouraged to maintain spatial edge of street. No chain link, vinyl, split rail, wire, or barbed wire is allowed.
Access:	A vehicle entry way to a parking or loading area shall be a maximum width of 18 feet. Pedestrian access from parking areas, garages or parking structures shall exit directly to a frontage line except for underground parking accommodations.
Building Projections:	No part of any building, except overhanging eaves, awnings, balconies, bay windows, and other architectural features shall encroach beyond the minimum front setback line.
Landscaping:	Landscaping is encouraged but shall not be an impediment on streets, sidewalks or travel ways. Street trees are encouraged. See Section 6.4.5

PARKING	
Residential	Vehicle parking areas shall be located only on driveways, in garages or designated parking areas and shall not extend into the street right of way or sidewalk. Residential parking areas and/or garages shall be located to the rear of the building whenever possible or to the side if rear location isn't achievable. Screening and/or fencing is required for parking areas along a street. Parking areas larger than 10 spaces require additional

	landscaping. See Section 6.4.3
Commercial	No on-site or off-street parking (see Section 6.4.3.2 below) is required for certain commercial uses, see Section 6.4.3. However, if on-site or offstreet parking is required or is to be provided, such parking shall be located to rear of the property to the greatest extent possible. Parking to the side is limited to no more than 40% of the lot width. Screening and/or fencing is required for parking areas along a street. Parking areas larger than 10 spaces require additional landscaping. See Section 6.4.3.
Low-Impact Industrial	Parking shall be located to rear of the property to the greatest extent possible. Parking to the side is limited to no more than 40% of the lot width. Screening and/or fencing is required for parking areas along a street. Parking areas larger than 10 spaces require additional landscaping. See Section 6.4.3.

6.4.4 Parking

Article 7.7 for parking requirements shall apply except as noted below.

6.4.4.1 Parking Waivers

The Planning Board may waive or adjust all requirements for parking within the Village Overlay District when it is not possible or in the best interest of the Town to meet the requirements.

6.4.4.2 Definitions

For the purposes of the Village Overlay District, the following definitions apply:

Off-street parking means parking located in a parking area or lot which is shared with other buildings and is not located on the lot for which the use is proposed

On-site parking means parking provided on the same lot as the building for which the proposed use is located.

On-street parking means parking along either a proposed or existing street.

6.4.4.3 General Parking Standards for Commercial, Office, Mixed-Use or Multi-family Structures in the Village Overlay District

- A. On-street parking along the new main street shall be parallel parking only.
- B. All off-street or on-site surface parking areas shall be located to the rear of the building. If this is not possible, as determined by the Planning Board, the parking area shall be to the side of the building.

- C. No off-street or on-site surface parking area may contain greater than 30 parking spaces.
- D. All off-street and on-site surface parking areas which are not located behind a building or are located along a street must be screened from the street (see Section 6.4.5 Landscaping).
- E. Any off-street or on-site parking area which contains greater than 10 spaces is required to have additional landscaping (see Section 6.4.5 Landscaping)
- F. Shared parking is encouraged. A plan describing how shared parking would work is required as part of application that proposes such parking.

6.4.4.4 Parking Standards for Certain Uses

- A. Retail uses located on the first floors of mixed-use buildings are not required to have on-site parking. If on-site parking is proposed for a retail use, the standards in 6.4 shall apply.
- B. Restaurants are not required to have on-site parking if they will seat 40 or fewer people. If on-site parking is proposed for such a restaurant use, the standards in 6.4 shall apply.

6.4.5 Open Space/Greenways

A. Objectives

The Village Overlay District shall include open spaces both public and private. Open space means landscaped green areas designed for a purpose such as civic gatherings, outdoor performances, playgrounds, or sitting. These open spaces may or may not also contain hardscaped or paved walkways, seating areas, performing areas or sidewalks. Open space which may include a walkway and primarily exists to connect from one place to another is a greenway. A continuous greenway shall connect the former tannery site to the Salmon Falls River to the south and to the open space adjacent to the former Estabrook School to the north. Such greenway may connect along the way to other open space.

Redevelopment of the former tannery site within the Village Overlay District requires 25% of the total site (comprised of the area bounded by Wilson Street, Sullivan Street, Saw Mill Hill and School Streets, excluding the area between Back Street, Sullivan Street and Saw Mill Hill) to be open space.

Developers shall coordinate with the Town on locations of open space, greenways and connections to adjacent community spaces, seating areas, residential housing and playgrounds.

B. Key Design Features

1. Sustainably landscaped, using drought-tolerant and when possible, native plantings
2. Shade trees
3. Benches
4. Continuous greenway through former tannery site
5. Green infrastructure and best practices storm water management, such as rain gardens to manage and filter storm water
6. Places to sit, play and gather for all ages
7. Public art

6.4.5.1 Design Standards

- A. Greenways or paved/hardscaped walkways must be a minimum of 8 feet wide.
- B. The required continuous greenway shall connect the public park at the intersection of Saw Mill Hill and School Streets to the Town owned land on Wilson Street adjacent to the former Estabrook School.
- C. Open space shall comprise 25% of the former tannery site comprised of the area bounded by Wilson Street, Sullivan Street, Saw Mill Hill and School Streets, excluding the area between Back Street, Sullivan Street and Saw Mill Hill.
- D. All open space which includes seating shall have either trees or shrubs to provide shade and/or a sense of enclosure.
- E. Shade trees shall be installed along greenways whenever feasible, as determined by the Planning Board.
- F. Greenways and open space shall be included on site plans and landscape plans submitted for consideration by the Planning Board.

6.4.6 Landscaping

A. Objectives

This section consists of landscaping and screening standards for use throughout the Village Overlay District. The Town of Berwick recognizes the aesthetic, ecological, and economic value of landscaping and requires its use to:

- Promote the reestablishment of vegetation in more densely settled areas for aesthetic, health, and urban wildlife reasons;
- Reduce storm water runoff pollution, temperature, and rate and volume of flow;
- Promote compatibility between land uses by reducing the visual, noise, and lighting impacts of specific development on users of the site and abutting uses;
- Unify development, and enhance and define public and private spaces;
- Promote the retention and use of existing non-invasive vegetation;
- Aid in energy conservation by providing shade from the sun and shelter from the wind.

B. Key Design Features

- Diversity of street trees
- Shade trees within the open spaces and along the continuous greenway
- Purpose-driven landscaped open spaces
- Landscaped parking areas
- Fencing • Hardscaped or paved walkways

6.4.6.1 Design Standards

Landscape plans shall be submitted for all projects for the Planning Board's review and approval.

A. Screening for Parking Lots

All parking lots not located behind a building or located along a street shall be screened as follows:

1. By trees and/or shrubs at least six feet tall, composed of at least 50% evergreen plantings, in numbers as determined by the Planning Board or;
2. By a fence between five and six feet tall, constructed of a material matching the finishes of surrounding buildings or;
3. By a combination of a fence four feet tall, constructed of a material matching the finishes of surrounding buildings, and deciduous trees and shrubs

B. Screening for Service and Loading Areas

1. All service areas for dumpsters, compressors, generators and similar items shall be screened as follows:
 - a. By a fence six feet tall, constructed of a material matching the finishes of surrounding buildings, surrounding the service area except for the necessary ingress/egress.
2. All areas to be used for loading that are not located within a parking area or that are not located behind a building shall be screened as follows:
 - a. By a fence six feet tall, constructed of a material matching the finishes of surrounding buildings, screening it from the street.

C. Landscaping for Parking Lots

All parking lots with more than ten parking spaces must:

1. Plant shade trees within planting strips at least four feet wide around the perimeters of the parking area at 15-20 foot intervals or
2. Provide a four foot wide interior planting strip within the parking area and plant shade trees at 15-20 foot intervals.
3. Shade trees shall have at minimum 1.5 inch caliper as measured six inches from the ground

D. Street Trees

1. Street trees shall be of a diversity of deciduous species to avoid decimation in the event of a disease or a pest and shall be non-fruit bearing
2. Street tree species shall be native when possible but shall be tolerant of salt and drought. Tree gators are required for the first several years after a tree is installed.
3. Street tree species chosen shall not be known for weak branching structure or a propensity for shallow roots that may cause sidewalk/walkway heaving.
4. Street trees shall have at minimum two inches caliper as measured six inches from the ground.

E. Types of Plantings (Trees, Shrubs, Perennials, Ornamental Grasses)

1. Native plants are preferred
2. Invasive species as defined by the State of Maine are prohibited

3. Herbaceous perennials and ornamental grasses are encouraged
4. Low maintenance, drought-tolerant plants are encouraged

F. Installation and Maintenance

1. All planting beds and strips shall be mulched either with compost or with a natural-colored bark mulch. No dyed mulches such as orange or red are permitted.
2. All trees shall have tree gators installed to provide moisture during their first years of being planted.
3. Any tree, including a street tree, shrub or plantings that are part of a plan, reviewed and approved by the Planning Board which does not survive for one full year after installation shall be replaced by the applicant at the applicant's cost.
4. Even if drought-tolerant, all plantings will require water at least occasionally the first year or two after planting in order to survive.
5. While plantings should be drought-tolerant, drip irrigation may be used if regulated by a timer and conditions. Irrigation may not be run indiscriminately.

6.4.7 Energy and Sustainability

- A. Site design and building placement shall be attentive to the surrounding environment including sun, wind and shade patterns related to existing buildings.
- B. Buildings must be built to meet IEEC2015 standards. Building designs and construction shall meet all current energy codes. Energy efficiency with a goal of near net zero is strongly encouraged.
- C. Use of solar power, geothermal, and other alternative and sustainable power sources are encouraged.

6.4.8 Storm water

- A. All applications in the Village Overlay District shall be required to comply with the Town of Berwick's storm water regulations as found in Berwick's Zoning Ordinance.
- B. Green roofs, rain gardens, bioretention cells and other such low impact development is both strongly encouraged and preferred.

6.4.9 Application and Process

6.4.9.1 Application

- A. All applications must include:
 1. Village Overlay District application form.

2. Site plans which meet the requirements of Article 9.8 and in addition must show:
 - a. All greenways, open space and sidewalks, both proposed and existing
 - b. The footprint of all existing abutting buildings
 - c. All existing or proposed utilities
 - d. All on-site parking, loading and service areas
 3. Building elevation drawings showing all four sides of the building including details such as windows, doors, trim, etc.
 4. A materials list to include the type of siding, roofing and trim.
 5. Landscape plan as a separate plan if a parking area and/or open space area, either public or private is proposed. Such plan shall include a planting list and hardscaping and/or fencing details.
 6. A storm water management plan prepared in accordance with Article 7.16 if required.
- B. The Planning Board may request additional plans or reports as they deem necessary at any time during the approval process.

6.4.9.2 Process

- A. Prior to submitting the application, the Applicant shall meet with the Code Enforcement Officer and the Town Planner/Planning Consultant to discuss the application.
- B. The process as described in Article 9.8 Conditional Use Permits and Site Plan Review shall be followed unless otherwise noted.
- C. The Planning Board may, at the Applicant's expense, hire an engineer, consultant or other professional to review the plans. The Applicant shall be given an estimate of the cost of such services and shall submit that sum to the Town before being placed on the agenda for further discussion with the Planning Board. Any funds remaining after the Town has paid the review bill in full shall be remitted to the Applicant. If the Planning Board requires additional review or the funds are not sufficient to complete the review, the Applicant shall submit the necessary funds before being placed on the Planning Board agenda. No building permit may be issued until all review costs have been submitted in full by the Applicant to the Town.

6.4.9.3 Waivers

- A. Submission Requirements.

1. The Planning Board may waive a submission requirement when it is shown by the Applicant that the circumstances of the site proposed for development are such that the requirements would not be applicable or would be an unnecessary burden upon the applicant and that such modification or waiver would not adversely affect abutting landowners or the general health, safety and welfare of the Town and where the waiver would not have the effect of nullifying the intent and purpose of the official zoning map, any ordinance, or the Comprehensive Plan.

2. The Applicant shall submit a written request and the reason for the waiver at the time of application submission.

3. The Board shall consider and accept or reject each waiver request separately. Each approved waiver request and the special circumstances which the Board considered before granting the waiver shall be included in written Findings of Fact.

B. Dimensional Requirements

1. Any request for variance of any dimensional requirements under this Ordinance shall be subject to the requirements for applications for variance under the Town's Zoning Ordinance and as required by 30-A M.R.S. § 4353(4) or any successor statute and shall be decided by the Town's Zoning Board of Appeals.

6.5 Density on Division of Land.

The maximum net residential density allowable for any division of land or for construction or placement of more than one dwelling unit on a single parcel of land shall be calculated on the basis described in the table below. For example, in developments where sewer service is not being provided, all of the well-drained and moderately well-drained land may be included in the density calculations, plus one quarter of the poorly drained land. Development on divided land shall not occur in percentages greater than those listed in the table below.

**Land Which May Be Included as Suitable Land
When Calculating Net Residential Density***

	Excessively drained, well drained and moderately well-drained (percent)	Poorly drained and somewhat poorly drained (percent)	Very poorly drained (percent)	Slopes greater than 25% (percent)
Public sewer	100	50	0	25
No public sewer	100	25	0	0

*Land as designated by the United State Department of Agriculture Soil Conservation Service National Cooperative Soil Survey. A high intensity soil survey by a licensed soil scientist may be required by the Planning Board or Code Enforcement Officer.

ARTICLE VII

PERFORMANCE STANDARDS -- GENERAL REQUIREMENTS

The following standards shall apply to all uses, both conditional and permitted, as appropriate in the various districts. See Article XIV for standards in the shoreland zone.

7.1 Air Emissions.

Emission of dust, dirt, fly ash, fumes, vapors or gases which could be injurious to humans, animals or vegetation, detrimental to the health and safety of adjoining or nearby properties or which could soil or stain persons or property, at any point beyond the lot line of the commercial or industrial establishment creating that emission, shall not be permitted. Any air emissions must meet all applicable state and federal statutes.

7.2 Buffer Areas.

Any non-residential building or use established in or abutting a residential district or use, shall provide a landscaped buffer strip to visually screen the use. Where no natural vegetation can be maintained or due to varying site conditions, the landscaping may consist of fences, walls, tree plantings, hedges or combinations thereof. The buffering shall be sufficient to minimize the impacts of any kind of potential use such as loading and unloading operations, outdoor storage areas, vehicle parking, mineral extraction or waste collection and disposal areas. Where a potential safety hazard to small children could exist, physical screening/barriers shall be used to deter entry to such premises. The buffer areas shall be maintained and vegetation replaced to insure continuous year round screening.

7.3 Explosive Materials.

No flammable or explosive liquids, solids or gases used for commercial or industrial purposes shall be stored in bulk above ground unless they are located at least 75 feet from any lot line or 40 feet for underground storage and all materials shall be stored in a manner and location which is in compliance with appropriate rules and regulations of the Maine Department of Public Safety and other appropriate federal, state, and local regulations.

7.4 Glare.

Lighting may be used which serves security, safety and operational needs but which does not directly or indirectly produce harmful effects on abutting properties or which would impair the vision of a vehicle operator on adjacent roadways. Lighting fixtures shall be shielded or hooded so that the lighting elements are not exposed to normal view by motorists, pedestrians, or from adjacent dwellings. Direct or indirect illumination shall not exceed 0.5 footcandles upon abutting residential properties.

7.5 Landscaping.

The landscape shall be preserved in its natural state insofar as practical by minimizing tree removal and grade changes in keeping with the general appearance of neighboring developed areas. Landscaping shall be designed to soften, screen, or enhance the physical design of structures and parking areas to avoid the encroachment of the proposed use on abutting land uses. All parking lots shall be landscaped along the property boundaries with shrubbery, trees and other landscape materials.

7.6 Noise.

The maximum permissible sound pressure level of any continuous, regular or frequent source of sound produced by any activity shall be limited by the time period and land use district listed below. Sound levels shall be measured at least four feet above ground at the property boundary.

Sound Pressure Level Limits
(Measured in dB(A) scale)
7 a.m. to 10 p.m. 10 p.m. to 7 a.m.

Residential Districts	60	50
Industrial/Commercial Districts	75	70

The level specified may be exceeded by ten dB(A) for a single 15 minute period per day. Noise shall be measured by a meter set on the A-weighted response scale, slow response. The meter shall meet the American National Standards Institute (ANSI S1 4-1971) "American Standard Specification for General Purpose Sound Level Meters."

No person shall engage in construction activities on a site abutting any residential use between the hours of 10 p.m. and 7 a.m., which exceed those limits established for residential districts. Otherwise the following activities shall be exempt from these regulations.

- A. Sounds emanating from construction and maintenance activities conducted between 7 a.m. and 10 p.m.
- B. Sounds emanating from safety signals, warning devices, emergency pressure relief valves and other emergency activities.
- C. Sounds emanating from traffic on public transportation facilities.

7.7 Off-Street Parking and Loading.

A. General.

1. A permitted use in any district shall not be extended, and no structure shall be constructed or enlarged, unless off-street automobile parking space is provided in accordance with the following requirements.
2. Parking areas with more than two parking spaces shall be arranged so that it is not necessary for vehicles to back into the street.
3. Each off-street parking area shall have no more than two openings onto the same street, each opening not to exceed 26 feet in width.
4. Required off-street parking for all land uses shall be located on the same lot as the principal building or facility.
5. Off-street parking and loading spaces for non-residential uses, where not enclosed within a building, shall be effectively screened from view by continuous landscaped area not less than six feet in height, unless waived by the Planning Board for expressed reasons, along exterior lot lines adjacent to residential properties and all public roads, except that driveways shall be kept open to provide visibility for entering and leaving. No off-street parking and loading shall be permitted within the front setback or any setback adjoining a public street, except as specifically authorized in this ordinance.
6. The joint use of a parking facility by two or more principal buildings or uses may be approved as an administrative appeal by the Board of Appeals where it is clearly demonstrated that said parking facilities would substantially meet the intent of the requirements by reasons of variation in the time of peak hour use by patrons or employees of such establishments.
7. Parking spaces shall be provided as required and made available for use prior to the issuance of the Certificate of Occupancy.

8. Parking areas shall be designed to meet the stormwater performance standards in Section 7.16, and to meet the *Stormwater Management in Maine* manual, published by the Maine Department of Environmental Protection, January 2006, where applicable. Privately owned stormwater management facilities shall be maintained in accordance with Section 7.22.

B. Additional Requirements for Non-Residential Uses.

1. Access points from a public road to non-residential uses shall be so located as to minimize traffic congestion and to avoid generating traffic on local access streets of a primarily residential character.

2. All driveway entrances and exits shall be kept free from visual obstructions higher than three feet above street level for a distance of 25 feet measured along the intersecting driveway and street lines in order to provide visibility for entering and leaving vehicles.

3. Loading facilities shall be located entirely on the same lot as the building or use to be served so that trucks, trailers, and containers shall not be located for loading or storage upon any town way.

4. The following minimum off-street loading bays or berths shall be provided and maintained in the case of new construction, alterations, and changes of use:

a. Retail, office, consumer services, wholesale, warehouse and industrial operations (including waste facilities) with a gross floor area of more than 5,000 square feet require the following:

5,001 to	20,000 sq. ft.	1 bay
20,001 to	50,000 sq. ft.	2 bays
50,001 to	100,000 sq. ft.	3 bays
100,001 to	150,000 sq. ft.	4 bays
150,001 to	300,000 sq. ft.	5 bays

b. Each 150,000 square feet over 300,000 square feet requires one additional bay.

No loading docks shall be on any street frontage. Provision for handling all freight shall be on those sides of any buildings which do not face on any street or proposed streets.

C. Parking Lot Design Criteria (Not applicable to single family dwellings and duplexes)

1. Vehicular Entrance and Exit

a. Entrances and exits should be clearly identified by the use of signs, curb cuts, and landscaping.

b. Entrance/exit design should be reviewed by and be in conformance with the standards of the Maine Department of Transportation traffic personnel for size, location sight-distance, grade separation, and possible future changes in highway alignment on any affected public roads.

2. Interior Vehicular Circulation

a. Major interior travel lanes should be designed to allow continuous and uninterrupted traffic movement.

b. Enclosures, such as guardrails, curbs, fences, walls, and landscaping, should be used to identify circulation patterns of parking areas and to restrict driving movements

diagonally across parking aisles, but not to reduce visibility of oncoming pedestrians and vehicles.

3. Parking






a. Access to parking stalls should not be from major interior travel lanes, and shall not be immediately accessible from any public way.

b. Parking areas shall be designed to permit each motor vehicle to proceed to and from the parking space provided for it without requiring the moving of any other motor vehicles.

c. Parking aisles should be oriented perpendicular to stores or businesses for easy pedestrian access and visibility.

d. All parking spaces and access drives shall be at least five feet from any side or rear lot line, except for the additional requirements in buffer yards.

e. Parking stalls and aisle layout shall conform to the below standards

PARKING ANGLE	STALL WIDTH	SKW WIDTH	STALL DEPTH	AISLE WIDTH
				
90°	9'-0"		18'-5"	26'-0"
60°	8'-6"	10'-5"	19'-0"	14'-6" ONE WAY
45°	8'-6"	12'-9"	17'-5"	12'-0" ONE WAY
30°	8'-6"	17'-0"	17'-0"	12'-0"

f. Painted stripes should be used to delineate parking stalls. Stripes should be a minimum of four inches in width. Where double lines are used, they should be separated a minimum of one foot on center.

g. In aisles utilizing diagonal parking, arrows should be painted on the pavement to indicate proper traffic flow.

h. Bumpers and/or wheel stops should be provided where overhang of parked cars might restrict traffic flow on adjacent through roads, restrict pedestrian movement on adjacent walkways, or damage landscape materials.

i. Parking spaces shall be provided to conform with the number required in the following schedule:

ACTIVITY**MINIMUM REQUIRED PARKING**

Residential with 2 or more bedrooms with 1 bedroom	2 spaces per dwelling unit 1 1/2 spaces per dwelling unit
Elderly	1 space per dwelling unit
Tourist home, boarding, lodging house, motel, hotel, inn	1 space per room per unit rental and for each employee on the largest shift
Church	1 space per three seats based upon maximum seating capacity
Schools Primary Secondary Post-Secondary	1 1/2 spaces per classroom 8 spaces per classroom 1 space for each student and 1 space for each faculty and staff member
Child care facility	1 space for every 4 children the facility is licensed to care for
Private Clubs or Lodges	1 space per every 75 square feet of floor space
Theater, Auditorium, Public Assembly Areas	1 space per three seats based upon maximum seating capacity
Funeral	1 space for every 100 square feet of floor space
Medical Care Facilities working	1 space for every three beds and every two employees on the maximum shift
Offices, Banks	1 space for every 150 square feet of floor space
Medical Offices (MD's, OD's, Dentists)	10 spaces for each doctor, dentist, or or other medical practitioner
Veterinarian clinic, kennel	5 spaces per veterinarian
Retail and Service Businesses	1 space for every 150 square feet of floor space
Barber/beauty shop	4 spaces per chair
Restaurant	1 space per three seats based upon maximum seating capacity
Industrial Businesses	1 space per employee on the maximum working shift
Warehouse, wholesale	1 space per 500 square feet floor area

	business
Flea Market	3 spaces per table
Mixed Use	Total of individual uses
Automobile repair garages and gasoline filling stations.	5 spaces for each bay or area used for repair work
Library, museum, art gallery	1 space for each 150 square feet of floor space
Marina	1 space for each boat slip and mooring
Commercial recreation facility, fitness spa	1 space for each 100 square feet of floor area
Waste facility	1 space per employee on the maximum working shift

Notes:

1. Where the calculation of the aforementioned parking spaces results in a fractional part of a complete parking space, the parking spaces required shall be construed to be the next highest number.
2. The above are minimum standards, and additional parking spaces shall be required if these prove to be inadequate. However, within the C/I and SC/I Districts, where a new use or expanded use in an existing building cannot meet the above parking standards, the Planning Board may, as a conditional use in accordance with this chapter, waive the above requirements.
3. Where floor space is to be used in calculating the number of required parking stalls, gross floor space shall be used unless otherwise noted.

7.8 Refuse Disposal.

The applicant shall provide for the disposal of all solid and liquid wastes on a timely basis and in an environmentally safe manner. The Planning Board shall consider the impact of particular industrial or chemical wastes or by-products upon the town's facilities (in terms of volume, flammability or toxicity) and may require the applicant to dispose of such wastes elsewhere, in conformance with all applicable state and federal regulations. The Board may require the applicant to specify the amount and exact nature of all industrial or chemical wastes to be generated by the proposed operation.

7.9 Traffic.

Proposed developments shall provide for safe access and egress to roads. Safe access shall be assured by providing an adequate number and location of access/egress points with respect to sight distances, intersections, and other traffic generators. The proposed development shall not have an unreasonable impact on local roads by degrading the levels of service and shall assure safe interior circulation patterns by separating vehicular and pedestrian traffic within the site. Access/egress points shall be designed in accordance with the following safe sign distances.

<u>Speed Limit</u>	<u>Recommend</u>	<u>Minimum</u>
25 mph	250 ft.	175 ft.
30 mph	300 ft.	210 ft.
35 mph	350 ft.	245 ft.
40 mph	400 ft.	280 ft.

The Maine Department of Transportation may be consulted on plans reviewed under this ordinance.

7.10 Sewage Provisions.

A. When not serviced by the public sewerage system, the approval of building permit applications shall be subject to presentation of a completed site evaluation form (HHE-200) which evidences adequate soil conditions for sewage disposal.

B. When two or more lots or buildings in different ownership share a common subsurface disposal system, the system shall be owned and maintained in common by an owners' association. Covenants in the deeds for each lot shall require mandatory membership in the association and provide for adequate funding of the association to assure proper maintenance of the system.

C. Industrial or commercial waste waters may be discharged to municipal sewers only and in such quantities and/or of such quality as to be compatible with commonly accepted municipal sewage treatment operations. Such wastes may require pretreatment at the industrial or commercial site in order to render them amenable to municipal treatment processes. Pretreatment includes, but is not limited to, screening, grinding, sedimentation, pH adjustment, surface skimming, chemical oxidation and reduction and dilution. The disposal of industrial or commercial waste waters by means other than the municipal sewerage system must comply with the laws of the State of Maine concerning water pollution. Wash water or other process water carrying stone dust, stone particles, silt or other mineral matter will not be accepted into the municipal system.

D. All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules.

E. Within the R-1 District, any new proposed subdivision shall be served by public sewer at the expense of the applicant or by negotiated agreement with the Berwick Sewer District. Within the R-1 District any new residential dwelling unit or commercial use requiring a building permit shall be served by public sewer.

F. When a lot is not serviced by public sewage disposal, or unless the lot is part of a cluster development served by a common subsurface disposal system, the following standards shall apply:

- a. Each proposed lot must be served by a septic system located within its boundaries.
- b. If the depth to a limiting factor, as defined by the above rules is less than 24 inches, both the septic system and a replacement system site must be located within each proposed lot. The reserve area shall be shown on the plan and restricted so it will not be built on.
- c. Septic systems serving a structure on one lot are not allowed to be located on abutting or neighboring lots.
- d. In no instance shall a disposal area be on a site that requires a New System Variance from the Subsurface Wastewater Disposal Rules.

7.11 Setbacks and Screening.

A. Exposed storage areas, exposed machinery, sand and gravel extraction operations, and areas used for the storage or collection of discarded automobiles, auto parts, metals or any other articles of salvage or refuse, shall have sufficient setbacks and screening (such as a stockade fence or a dense evergreen hedge six feet or more in height) to provide a visual buffer sufficient to minimize their impact on other land uses and properties in the area.

B. Where a potential safety hazard to children would be likely to arise, physical screening sufficient to deter small children from entering the premises shall be provided and maintained in good condition.

7.12 Signs.

A. General Requirements.

All signs must be stationary and permanently installed except where exempted by the ordinance. No sign shall be comprised of or illuminated by intermittent light except digital public service messages such as time, date, temperature, etc. All lighting shall be hooded or shielded to prevent direct illumination of public streets or abutting properties. Projecting signs shall maintain a minimum height clearance of eight feet above ground level, project only at an angle 90 degrees from the surface, and not extend more than four feet. The sign face shall not exceed six square feet per side, and the length to width ratio shall not exceed 2:1.

B. The following signs are exempted from land use requirements: temporary signs, memorial tablets, public notices, public safety signs, real estate signs, national and state flag, religious symbols or insignias, historical plaques, house numbers, political signs, interior signs, motor vehicle signs, service club road signs.

C. Signs existing at the time of enactment of these regulations may be continued and maintained but not enlarged or replaced except in conformity with these regulations.

In the Shoreland Commercial Industrial (SC/I) District, commercial signs may not exceed 40 square feet in area when mounted flat against the building surface. Such signs, individual and collectively, may at no time cover more than 20% of the gross surface area of the building face on which they are mounted. On each premise only one sign per occupancy may be affixed to the building exterior, except occupancies which face more than one public way may have one attached sign on each side of the building which faces a public way. The total signage area of all signs, identifying goods or services offered on the premises, per business shall not exceed a total of 100 sq. ft., except for corner lots which may double this amount.

E. Except for the Shoreland Commercial Industrial (SC/I) District or as otherwise provided in this ordinance, signs shall conform to the following requirements:

1. Signs relating names as well as goods and services sold on the premises shall be permitted, provided that such signs shall not exceed six square feet in area and shall not exceed two signs per premises.

2. Residential users may display a single sign not over three square feet in area relating to the sale, rental, or lease of the premises.

3. Signs relating to trespassing and hunting shall be permitted without restriction as to number, provided that no such sign shall exceed two square feet in area.

4. Signs relating to public safety shall be permitted without restriction.

5. No sign shall extend higher than 20 feet above the ground.

6. Signs may be illuminated internally or externally by shielded, non-flashing lights.

7. The time for the message to change shall not exceed three (3) seconds nor fade into the subsequent message.

SIGN STANDARDS

Permitted Signs	Districts	Maximum Sign Area Posted Speed Limit	Post or Free Standing	Maximum Height	Maximum Wall Sign
Address	All(6)	n/a	1 sq. ft.	6 ft.	1 sq. ft.
Contractor	All(6)	n/a	12 sq. ft.	6 ft.	12 sq. ft.
Development	All(6)	n/a	12 sq. ft.	6 ft.	Not permitted
Real Estate	All(6)	n/a	6 sq. ft.	6 ft.	6 sq. ft.
Residential	All(6)	n/a	12 sq. ft.	6 ft.	12 sq. ft.
					<u>% Signable Area (2)</u>
Commercial	RC/I, C/I, SC/I	25 mph	32 sq. ft.	12 ft.	20%
	RC/I, C/I, SC/I	30 mph	40 sq. ft.	14 ft.	20%
	RC/I, C/I, SC/I	35 mph	45 sq. ft.	16 ft.	20%
	RC/I, C/I, SC/I	45 mph	64 sq. ft.	20 ft.	20%
	RC/I, C/I, SC/I	50 mph	75 sq. ft.	20 ft.	20%
	RC/I, C/I, SC/I	55 mph	88 sq. ft.	20 ft.	20%
Special Events	C/I	n/a	n/a	n/a	Refer to C/I
Travel Directory	C/I	n/a	64 sq. ft.	12 ft.	40%

Notes:

- (1) All wall signs must be located below the cornice line or second story window sill, whichever is lower.
- (2) Wall sign graphics may only be installed in the "signable area" of the facade (an area excluding window or door openings, or architectural details or ornamentation).
- (3) Post signs must be separated by at least 100 feet and are permitted for buildings setback 35 feet or more.
- (4) Permanent signs affixed to windows may not exceed 25 percent of the window area
- (5) The sign area of a post sign shall be based on only one side of a two faced sign.
- (6) Does not include Stream Protection, Limited Residential and Resource Protection Districts

7.13 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.

7.14 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 require a written soil erosion and sedimentation control plan. Erosion and sedimentation control plans shall be designed in accordance with the *Maine Erosion and Sediment Control BMP's* manual, published by the Maine Department of Environmental Protection, March 2003. 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. The top or bottom of a cut or fill shall not be closer than ten feet to an adjoining property unless otherwise mutually agreed to by the affected landowner and town but in no instance shall said cut or fill exceed a three-to-one slope.

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. Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainage ways shall be designed and constructed in order to carry water from a 25 year storm or greater, and shall be stabilized with vegetation or lined with rip-rap.

7.15 Storage.

All materials stored outdoors shall be stored in such a manner as to prevent the breeding and harboring of insects, rats or other vermin. This shall be accomplished by enclosures in containers, raising materials above ground, separation of material, prevention of stagnant water, extermination procedures or other means.

7.16 Storm Water Management.

All new construction and development, whether or not served by a storm water collection and transportation system, 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 storm water.

For developments that create less than one acre of disturbed area, the Basic Performance Standards specified in the Maine Department of Environmental Protection *Chapter 500: Stormwater Management, Appendix A-Erosion and Sedimentation Control* rules shall be utilized.

For developments that create one or more acres of disturbed area, the stormwater management provisions specified in Chapters 500 and 502 of the Maine Department of Environmental Protection Stormwater Management rules will apply.

All development plans shall define maintenance requirements and identify parties responsible for maintenance of the storm water control system, in accordance with Section 7.22.

Storm water runoff systems should be designed to facilitate aquifer recharge when it is advantageous to compensate for ground water withdrawals. Conversely, designs should avoid recharge where ground water effects might be harmful. Design of permanent storage facilities should consider safety, appearance, recreational use, and cost and effectiveness or maintenance operations, in addition to the primary storage function. Natural overland flows, and open drainage channel and swale locations should be the preferred alignments for major components of a residential drainage system. The use of enclosed components (such as underground piping) should be minimized.

7.17 Toxic and Noxious Discharges.

No use shall for any period of time discharge across the boundaries of the lot wherein it is located toxic and noxious matter in environmental concentrations in excess of standards set forth by the Environmental Protection Agency and/or the Maine Department of Environmental Protection.

7.18 Water Quality.

No activity shall locate, store, discharge, or permit the discharge of any treated, untreated or inadequately treated liquid, gaseous, or solid materials of such nature, quality, obnoxiousness, toxicity, or temperature that run-off, seep, percolate, or wash into surface or ground waters so as to contaminate, pollute, or harm such waters or submerged debris, soil or scum, color, odor, taste, or unsightliness, or be harmful to human, animal, plant, or aquatic life. All outdoor storage facilities for fuel, chemicals, chemical or industrial wastes, and toxic biodegradable raw materials, shall be located on impervious pavement, and shall be completely enclosed by an impervious dike which shall be high enough to contain the total volume of liquid depth during a 25-year storm, so that such liquid shall not be able to spill onto or seep into the ground surrounding the paved storage area. Storage tanks for "home heating oil" and diesel fuel, not exceeding 275 gallons in size, may be exempted from this requirement, in situations where neither high seasonal water table (within 15 inches of the surface) nor rapidly permeable sandy soils are involved.

7.19 Water Supply.

A. Prior to the issuance of any occupancy permit for any structure with a potable water supply system, a water quality analysis demonstrating that the State of Maine Safe Drinking Water Guidelines are met shall be submitted to the Code Enforcement Officer.

B. Within the R-1 District all subdivisions proposed after the effective date of this ordinance shall be served by public water. Any new residential unit (outside of an approved subdivision) or commercial use requiring a building permit and within 500 feet of the public water line shall be served by public water.

7.20 Access to Lots.

No permit shall be issued to erect any structure on a lot without frontage on a public way unless an access road meeting the following criteria has been constructed within a deeded right of way a minimum of 50 feet in width. The access road shall be constructed to a minimum width of 12 feet if serving one dwelling unit, and 15 feet if serving two dwelling units. The access road shall contain a minimum depth of 15 inches of bank-run gravel and have drainage ditches and culverts at all appropriate points. Such an access road shall serve no more than two dwelling units, except as noted below. Any access road serving three or more dwelling units shall meet the road design and construction standards of the Town of Berwick Road Construction Standards.

More than two dwelling units may be allowed on a discontinued road for those lots created prior to March 14, 1987, provided that the road is brought up to the standards for two dwelling units as described above. One dwelling unit shall be allowed per lot of record, and an additional dwelling unit shall be allowed per lot of record provided that:

- A. the road standards described above are met (minimum width of fifteen feet, minimum depth of fifteen inches of bank-run gravel, and have drainage ditches and culverts at all appropriate points), and
- B. the applicable zone road frontage and lot dimensions requirements are met, and
- C. the building permit is issued only to a child of the record owner (this precludes any additional permits for those lots of record owned by other than an individual person or persons), and
- D. access to the additional dwelling unit shall be from the discontinued road and no other right of way, and
- E. a survey of the lot done by a State of Maine registered surveyor is recorded in the York County Registry of Deeds prior to the issuance of the additional building permit, said registered survey to contain the following provisions:
 - 1. No further subdivision of this lot is permitted without compliance with the Town of Berwick subdivision regulations then in existence.
 - 2. No further conveyance of this lot is permitted for five years from the date of the recording of the survey.
 - 3. The discontinued road is not maintained nor plowed by the Town of Berwick. The Town of Berwick is not responsible for any upgrading or plowing of the discontinued road. Any upgrading or plowing of the discontinued road will be at the expense of the lot owner.
- F. the conveyance creating a lot to the child of the record owner shall be recorded in the York County Registry of Deeds prior to the issuance of the additional building permit and said conveyance shall also contain the three provisions set forth in paragraph E. above as survey requirements, and
- G. the additional building permit issued contain the following provision:

NOTICE

THE DISCONTINUED ROAD IS NOT MAINTAINED NOR PLOWED BY THE TOWN OF BERWICK. THE TOWN OF BERWICK IS NOT RESPONSIBLE FOR ANY UPGRADING OR PLOWING OF THE DISCONTINUED ROAD. ANY UPGRADING OR PLOWING OF THE DISCONTINUED ROAD WILL BE AT THE EXPENSE OF THE LOT OWNER.

7.21 Non-Storm Water Discharge

A. Purpose. The purpose of this provision is to provide for the health, safety, and general welfare of the citizens of Berwick through the regulation of non-storm water discharges into Berwick's storm drainage system as required by federal and state law. This provision establishes methods for controlling the introduction of pollutants into Berwick's storm drainage system in order to comply with requirements of the federal Clean Water Act and state law.

B. Objectives. The objectives of this provision are:

1. To prohibit unpermitted or unallowed non-storm water discharges to the storm drainage system; and
2. To set forth the legal authority and procedures to carry out all inspection, monitoring and enforcement activities necessary to ensure compliance with this provision.

C. Applicability.

This Provision shall apply to all persons discharging storm water and/or non-storm water discharges from any premises into the storm drainage system.

D. Responsibility for Administration.

The Code Enforcement Officer is the enforcement authority who shall administer, implement, and enforce these provisions.

E. Prohibition of Non-Storm Water Discharges.

1. General Prohibition. Except as allowed or exempted herein, no person shall create, initiate, originate or maintain a non-storm water discharge to the storm drainage system. Such non-storm water discharges are prohibited notwithstanding the fact that the municipality may have approved the connections, drains or conveyances by which a person discharges unallowed non-storm water discharges to the storm drainage system.

2. Allowed Non-Storm Water Discharges. The creation, initiation, origination and maintenance of the following non-storm water discharges to the storm drainage system are allowed as long as they do not cause or contribute to a violation of the State's water quality standards:

- a. Landscape irrigation; diverted stream flows; rising ground waters; uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)); uncontaminated pumped ground water; uncontaminated flows from foundation drains; air conditioning and compressor condensate; irrigation water; flows from uncontaminated springs; uncontaminated water from crawl space pumps; uncontaminated flows from footing drains; lawn watering runoff; flows from riparian habitats and wetlands; residual street wash water (where spills/leaks of toxic or hazardous materials have not occurred, unless all spilled material has been removed and detergents are not used); hydrant flushing and fire fighting activity runoff; water line flushing and discharges from potable water sources; and individual residential car washing; and dechlorinated swimming pool discharges.
- b. Discharges specified in writing by the Code Enforcement Officer as being necessary to protect public health and safety; and
- c. Dye testing, with verbal notification to the Code Enforcement Officer prior to the time of the test.

3. Exempt Person or Discharge. This provision shall not apply to an exempt person or discharge, except that the Code Enforcement Officer may request from exempt persons and persons with exempt discharges copies of permits, notices of intent, licenses and orders from the EPA or DEP that authorize the discharge(s).

F. Suspension of Access to the Municipality's Small MS4.

The Code Enforcement Officer may, without prior notice, physically suspend discharge access to the storm drainage system to a person when such suspension is necessary to stop an actual or threatened non-storm water discharge to the storm drainage system which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the storm drainage system, or which may cause the municipality to violate the terms of its environmental permits. Such suspension may include, but is not limited to, blocking pipes, constructing dams or taking other measures, on public ways or public property, to physically block the discharge to prevent or minimize a non-storm water discharges to the storm drainage system. If the person fails to comply with a suspension order issued in an emergency, the Code Enforcement Officer may take such steps as deemed necessary to prevent or minimize damage to the storm drainage system, or to minimize danger to persons, provided, however, that in taking such steps the Code Enforcement Officer may enter upon the premises that are the source of the actual or threatened non-storm water discharge to the storm drainage system only with the consent of the premises' owner, occupant or agent, or pursuant to an administrative search warrant.

G. Monitoring of Discharges.

In order to determine compliance with these provisions, the Code Enforcement Officer may enter upon and inspect premises subject to this provision at reasonable hours with the consent of the premises' owner, occupant or agent: to inspect the premises and connections thereon to the storm drainage system; and to conduct monitoring, sampling and testing of the discharge to the storm drainage system.

H. Enforcement.

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of these provisions. Whenever the Code Enforcement Officer believes that a person has violated these provisions, the Code Enforcement Officer may enforce these provisions in accordance with 30-A M.R.S.A. § 4452.

1. Notice of Violation. Whenever the Code Enforcement Officer believes that a person has violated these provisions, the Code Enforcement Officer may order compliance with these provision by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:

- a. The elimination of non-storm water discharges to the storm drainage system, including, but not limited to, disconnection of the premises from the MS4;
- b. The cessation of discharges, practices, or operations in violation of this provision;
- c. At the person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of non-storm water discharges to the storm drainage system and the restoration of any affected property; and/or
- d. The payment of fines, of the municipality's remediation costs and of the municipality's reasonable administrative costs and attorneys' fees and costs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement or restoration must be completed.

2. Penalties/Fines/Injunctive Relief. Any person who violates these provisions shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the municipality's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any Person who violates these provisions also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the municipality for violation of federal and state environmental laws and regulations caused by or related to that person's violation of these provisions; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.

3. Consent Agreement. The Code Enforcement Officer may, with the approval of the municipal officers, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of these provisions for the purposes of eliminating violations of these provisions and of recovering fines, costs and fees without court action.

4. Appeal of Notice of Violation. Any person receiving a notice of violation or suspension notice may appeal the determination of the Code Enforcement Officer to the Board of Appeals in accordance with the provisions of Article X of the Berwick Land Use Ordinance. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The Board of Appeals shall hold a *de novo* hearing on the appeal within 30 days from the date of receipt of the notice of appeal. The Board of Appeals may affirm, reverse or modify the decision of the Code Enforcement Officer. A suspension under Section 6 of these provisions remains in place unless or until lifted by the Board of Appeals or by a reviewing court. A party aggrieved by the decision of the Board of Appeals may appeal that decision to the Maine Superior Court within 45 days of the date of the Board of Appeals decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

5. Enforcement Measures. If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal to the Board of Appeals, within 45 days of a decision of the Board of Appeals affirming the Code Enforcement Officer's decision, then the Code Enforcement Officer may recommend to the municipal officers that the municipality's attorney file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

6. Ultimate Responsibility of Discharger.

The standards set forth herein are minimum standards; therefore these provisions do not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the U.S. caused by said person. This provision shall not create liability on the part of the municipality, or any officer agent or employee thereof for any damages that result from any person's reliance on these provisions or any administrative decision lawfully made hereunder.

I. Severability.

These provisions are hereby declared to be severable. If any provision, clause, sentence, or paragraph of these provisions or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of these provisions.

7.22 Post-Construction Stormwater Management Article.

A. Purpose

The purpose of this Post-Construction Stormwater Management Article is to provide for the health, safety, and general welfare of the citizens of the Town of Berwick through review and approval of post-construction stormwater management plans and monitoring and enforcement of compliance with such plans as required by federal and State law. This Article establishes methods for post-construction stormwater management in order to comply with minimum control measures requirements of the federal Clean Water Act, of federal regulations and of Maine's Small Municipal Separate Storm Sewer Systems General Permit.

B. Objectives

This Article seeks to meet the above purpose through the following objectives:

1. Reduce the impact of post-construction discharge of stormwater on receiving waters; and
2. Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through use of Best Management Practices as promulgated by the Maine Department of Environmental Protection (MEDEP) pursuant to its Chapters 500 and 502 Rules, and ensure that these management controls are properly maintained and pose no threat to public safety.

C. Applicability

1. In General. This Article applies to all Development within the Municipality.
2. Exception. This Article does not apply to Development on a lot, tract or parcel less than one acre in area where that lot, tract or parcel is part of a subdivision that is approved under this Article; said lot, tract or parcel shall not require separate review under this Article, but shall comply with the Post-Construction Stormwater Management Plan requirements for that approved subdivision.

D. Post-Construction Stormwater Management Plan Approval

1. General Requirement. No Applicant for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for Development to which this Article is applicable shall receive such permit or approval for that Development unless the Municipal Permitting Authority for that Development also determines that the Applicant's Post-Construction Stormwater Management Plan for that Development meets the requirements of this Article.
2. Performance Standards.
 - a. The Applicant shall make adequate provision for the management of the quantity and quality of all stormwater generated by the Development through a Post-Construction Stormwater Management Plan. This Post-Construction Stormwater Management Plan shall be designed to meet the standards contained in the MEDEP's Chapters 500 and 502 Rules and shall comply with the practices described in the manual *Stormwater Management for Maine*, published by the MEDEP, January 2006, which hereby are incorporated by reference pursuant to 30-A M.R.S.A. § 3003.
 - b. The Applicant may meet the quantity and quality design standards of Chapter 500 and Chapter 502 MEDEP Rules above either on-site or off-site, but where off-site facilities are used, the applicant must submit to the Municipality documentation approved as to legal sufficiency by the Municipality's attorney that the Applicant has a sufficient property interest

in the property where the off-site facilities are located -- by easement, covenant or other appropriate legal instrument -- to ensure that the facilities will be able to provide post-construction stormwater management for the Development and that the property will not be altered in a way that interferes with the off-site facilities.

c. Where the Applicant proposes to retain ownership of the Stormwater Management Facilities shown in its Post-Construction Stormwater Management Plan, the Applicant shall submit to the Municipality documentation, approved as to legal sufficiency by the Municipality's attorney that the Applicant, its successors, heirs and assigns shall have the legal obligation and the resources available to operate, repair, maintain and replace the stormwater management facilities. Applications for Development requiring Stormwater Management Facilities that will not be dedicated to the Municipality shall enter into a Maintenance Agreement with the Municipality. A sample of this Maintenance Agreement is attached as Appendix 1 to this Article.

d. Whenever elements of the Stormwater Management Facilities are not within the right-of-way of a public street and the facilities will not be offered to the Municipality for acceptance as public facilities, the Municipal Permitting Authority may require that perpetual easements not less than thirty (30) feet in width, conforming substantially with the lines of existing natural drainage and in a form acceptable to the Municipality's attorney, shall be provided to the Municipality allowing access for maintenance, repair, replacement and improvement of the Stormwater Management Facilities. When an offer of dedication is required by the Municipal Permitting Authority, the Applicant shall be responsible for the maintenance of these Stormwater Management Facilities under this Article until such time (if ever) as they are accepted by the Municipality.

e. In addition to any other applicable requirements of this Article and the Municipality's Municipal Code of Articles, any Development which also requires a stormwater management permit from the MEDEP under 38 M.R.S.A. 420-D shall comply with the rules adopted by MEDEP under 38 M.R.S.A. 420-D(1), as the same may be amended from time to time, and the applicant shall document such compliance to the Municipal Permitting Authority. Where the standards or other provisions of such stormwater rules conflict with municipal ordinances, the stricter (more protective) standard shall apply.

f. For developments that result in new road construction where the facilities will be offered to the Municipality for acceptance, the applicant shall pay an amount equal to three percent (3%) of the road and infrastructure costs, as determined by the Municipality. For any developments that result in privately owned and maintained stormwater management facilities, any persons required to file an annual certification under Section E.1 of this Article shall pay an amount equal to one percent (1%) of the site infrastructure construction costs (parking lots, driveways, utilities, lighting, etc.), as determined by the Municipality.

g. Notice of BMP Discharge to Municipality's MS4. At the time of application, the Applicant shall notify the Municipal Permitting Authority if its Post-Construction Stormwater Management Plan includes any BMP(s) that will discharge to the Municipality's MS4 and shall include in this notification a listing of which BMP(s) will so discharge.

E. Post-Construction Stormwater Management Plan Compliance

1. General Requirements. Any Person owning, leasing or having control over Stormwater Management Facilities required by a Post-Construction Stormwater Management Plan under this Article shall demonstrate compliance with that Plan as follows.

a. That Person shall, at least annually, inspect, clean and maintain the Stormwater Management Facilities, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all

municipal and state inspection, cleaning and maintenance requirements of the approved Post-Construction Stormwater Management Plan.

b. That Person shall repair any deficiencies found during inspection of the Stormwater Management Facilities.

c. That Person shall, on or by July 1 of each year, provide a completed and signed certification to the Enforcement Authority in a form identical to that attached as Appendix 2 to this Article, certifying that the Person has inspected, cleaned and maintained the Stormwater Management Facilities, describing any deficiencies found during inspection of the Stormwater Management Facilities and certifying that the Person has repaired any deficiencies in the Stormwater Management Facilities noted during the annual inspection.

2. Right of Entry. In order to determine compliance with this Article and with the Post-Construction Stormwater Management Plan, the Enforcement Authority may enter upon property at reasonable hours with the consent of the owner, occupant or agent to inspect the Stormwater Management Facilities.

F. Enforcement

It shall be unlawful for any Person to violate any provision of or to fail to comply with any of the requirements of this Article or of the Post-Construction Stormwater Management Plan. Whenever the Enforcement Authority believes that a Person has violated this Article or the Post-Construction Stormwater Management Plan, the Enforcement Authority may enforce this Article in accordance with 30-A M.R.S.A. § 4452.

1. Notice of Violation. Whenever the Enforcement Authority believes that a Person has violated this Article or the Post-Construction Stormwater Management Plan, the Enforcement Authority may order compliance with this Article or with the Post-Construction Stormwater Management Plan by written notice of violation to that Person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:

a. The abatement of violations, and the cessation of practices, or operations in violation of this Article or of the Post-Construction Stormwater Management Plan;

b. At the Person's expense, compliance with BMPs required as a condition of approval of the Development, the repair of Stormwater Management Facilities and/or the restoration of any affected property; and/or

c. The payment of fines, of the Municipality's remediation costs and of the Municipality's reasonable administrative costs and attorneys' fees and costs.

If abatement of a violation, compliance with BMPs, repair of Stormwater Management Facilities and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement, compliance, repair and/or restoration must be completed.

2. Penalties/Fines/Injunctive Relief. Any Person who violates this Article or the Post-Construction Stormwater Management Plan shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the Municipality's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any Person who violates this Article or the Post-Construction Stormwater Management Plan also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the Municipality for violation of federal and State environmental laws and regulations caused by or related to that Person's violation of this Article or the Post-Construction Stormwater Management Plan; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this Section.

3. Consent Agreement. The Enforcement Authority may, with the approval of the municipal officers, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this Article or of the Post-Construction Stormwater Management Plan for the purposes of eliminating violations of this Article or of the Post-Construction Stormwater Management Plan and of recovering fines, costs and fees without court action.

4. Appeal of Notice of Violation. Any Person receiving a Notice of Violation or suspension notice may appeal the determination of the Enforcement Authority to the Board of Appeals in accordance with Article X of the Berwick Land Use Ordinance. The notice of appeal must be received within 30 days from the date of receipt of the Notice of Violation. The Board of Appeals shall hold a *de novo* hearing on the appeal within 30 days from the date of receipt of the notice of appeal. The Board of Appeals may affirm, reverse or modify the decision of the Enforcement Authority. A party aggrieved by the decision of the Board of Appeals may appeal that decision to the Maine Superior Court within 45 days of the date of the Board of Appeals decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

5. Enforcement Measures. If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal to the Board of Appeals, within 45 days of a decision of the Board of Appeals affirming the Enforcement Authority's decision, then the Enforcement Authority may recommend to the municipal officers that the municipality's attorney file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

G. Severability

The provisions of this Article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this Article.

H. Basis

The Town of Berwick enacts this "Post-Construction Stormwater Management Control Article" (the "Article") pursuant to 30-A M.R.S.A. § 3001 (municipal home rule ordinance authority), 38 M.R.S.A. § 413 (the "Wastewater Discharge Law"), 33 U.S.C. § 1251 *et seq.* (the "Clean Water Act"), and 40 CFR Part 122 (U.S. Environmental Protection Agency's regulations governing the National Pollutant Discharge Elimination System ("NPDES")). The Maine Department of Environmental Protection, through its promulgation of the "General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems," has listed the Town of Berwick as having a Regulated Small Municipal Separate Storm Sewer System ("Small MS4"); under this General Permit, listing as a Regulated Small MS4 necessitates enactment of this Article as part of the Municipality's Storm Water Management Program in order to satisfy the minimum control measures required by Part IV D 5 ("Post-construction stormwater management in Development").

7.23 Safety and Sanitation Provisions

All lots shall be maintained in a safe and sanitary condition and shall be kept free of accumulations of trash, garbage, refuse or other noxious materials which may constitute a fire hazard or a danger to health or safety. Any such condition shall be repaired, replaced, or removed.

APPENDIX 1

Maintenance Agreement for Stormwater Management Facilities

This Maintenance Agreement is made this ____ day of _____, 20____ by and between _____ and the Town of Berwick, Maine.

The project name is _____.

The location is: _____, Berwick, Maine.

The project's Tax Map and Lot Numbers are Tax Map Lot _____

The project is shown on a plan entitled " _____ " dated _____ and most recently revised on _____, approved by the _____ on _____ and recorded in the _____ County Registry of Deeds in Plan Book _____ Page _____ (the "Project").

WHEREAS, the approval of the Project includes Stormwater Management Facilities which requires periodic maintenance; and

WHEREAS, in consideration of the approval of the Project the Town of Berwick requires that periodic maintenance be performed on the Stormwater Management Facilities;

NOW, THEREFORE, in consideration of the mutual benefits accruing from the approval of the Project by the Town and the agreement of _____ to maintain the Stormwater Management Facilities, the parties hereby agree as follows:

1. _____, for itself, and its successors and assigns, agrees to the following:

(a) To inspect, clean, maintain, and repair the Stormwater Management Facilities, which includes, to the extent they exist, parking areas, catch basins, detention basins or ponds, drainage swales, pipes and related structures, at least annually, to prevent the build up and storage of sediment and debris in the system;

(b) To repair any deficiencies in the Stormwater Management Facilities noted during the annual inspection;

(c) To provide a summary report on the inspection, maintenance, and repair activities performed annually on the Stormwater Management Facilities to the Town Enforcement Authority;

(d) To allow access by Town personnel or the Town's designee for inspecting the Stormwater Management Facilities for conformance with these requirements.

(e) To create a homeowners' association for the purpose of maintaining the Stormwater Management Facilities.

2. Upon creation of the homeowners' association, the homeowners' association shall become responsible for compliance with the terms of this Agreement.

3. This Agreement shall constitute a covenant running with the land, and _____ shall reference this Agreement in all deeds to lots and/or units within the Project.

Witness

By: _____
Its: _____

TOWN OF BERWICK, MAINE

Witness

By: _____
Its: _____

STATE OF MAINE

_____, ss.

_____, 20__

Personally appeared the above-named _____, the
of _____, and acknowledged the foregoing
Agreement to be said person's free act and deed in said capacity.

Before me,

Notary Public / Attorney at Law

Print Name:

STATE OF MAINE

_____, ss.

_____, 20__

Personally appeared the above-named _____, the
of the Town of _____, and acknowledged
the foregoing Agreement to be said his/her free act and deed in said capacity.

Before me,

Notary Public / Attorney at Law

Print Name:

APPENDIX 2

Annual Stormwater Management Facilities Certification (to be sent to Municipal Enforcement Authority)

I, _____ (print or type name), certify the following:

1. I am making this Annual Stormwater Management Facilities Certification for the following property: _____ (print or type name of subdivision, condominium or other development) located at _____ (print or type address), (the "Property");

2. The owner, operator, tenant, lessee or homeowners' association of the Property is: _____ (names of owner, operator, tenant, lessee, homeowners' association or other party having control over the Property);

3. I am the owner, operator, tenant, lessee or president of the homeowners' association, or a contractor or consultant hired by the same (circle one);

4. I have knowledge of erosion and stormwater control and have reviewed the approved Post-Construction Stormwater Management Plan for the Property;

5. On _____, 20____, I inspected, cleaned and maintained the Stormwater Management Facilities, including but not limited to parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures required by the approved Post-Construction Stormwater Management Plan for the Property;

6. At the time of my inspection of the Stormwater Management Facilities on the Property, I identified the following deficiencies in the Stormwater Management Facilities:

7. On _____, 20____, I repaired or oversaw the repair of the deficiencies listed above, and when the repairs were completed, the Stormwater Management Facilities were performing in a satisfactory manner.

Date: _____, 20____.

By: _____
Signature

Print Name

STATE OF MAINE

_____, ss. _____, 20____

Personally appeared the above-named _____, the _____ of _____, and acknowledged the foregoing Annual Certification to be said person's free act and deed in said capacity.

Before me,

Notary Public/Attorney at Law

Print Name: _____

Mail this certification to the Municipal Enforcement Authority at the following address (to be completed by the Municipality):

ARTICLE VIII PERFORMANCE STANDARDS, SPECIFIC ACTIVITIES AND LAND USES

The following standards shall apply to all uses, both conditional and permitted, as appropriate in the various districts. See Article XIV for standards in the shoreland zone.

8.1 Campgrounds and Tenting Grounds.

Campgrounds shall conform to the minimum requirements imposed under state licensing procedures and the following (in cases of possible conflict, the stricter rule shall apply):

A. General.

1. A campground must be constructed on at least ten acres of land, and all camping units or structures shall be located at least 200 feet from any residence (except residences belonging to the campground owners).

2. Campsites shall be laid out and screened in such a manner that none are within view from public roads, navigable rivers, existing residences or approved subdivision lots. Any combination of evergreen planting, landscaped earthen berms, or solid fencing may be used to achieve this screening standard when campsites would otherwise be visible from the locations described above.

3. No trailers other than recreational vehicles as defined herein shall be permitted within any campground, temporarily or otherwise. No camping unit shall be stored or exhibited for sale for commercial purposes within the park.

4. Tent sites and sites for recreational vehicles (RVs) shall be laid out so that the density of each developed acre of land does not exceed the standards below (in terms of sites per acre of land, excluding circulation roads):

Tent sites	14 per acre
RV Sites	11 per acre

B. Parking and Circulation.

1. A minimum of 300 square feet of off-street parking plus maneuvering space shall be provided for each recreational vehicle, tent, or shelter site. Recreational vehicles shall be so parked in spaces that:

a. there shall be a minimum of 25 feet between vehicles; and

b. there shall be a minimum of 45 feet between all recreational vehicles/tents and all public rights of way located inside the boundaries of the campground.

2. Vehicular access shall be provided onto a hard-surfaced road adequate for the volume and type of traffic likely to be generated. Grades and sight distances specified in the town's subdivision regulations shall be observed in designing all intersections. Roads shall be constructed of at least 12 inches of bank-run gravel (no stone larger than four inches), two inches crushed gravel (1/2 inch chips) and two applications of liquid asphalt (1/2 gallon per square yard each application). The minimum width of roadways shall be 12 feet for one-way roads and 22 feet for two-way roads. No vehicle parking shall be permitted on the roadway.

C. Health and Safety.

1. Each recreational vehicle, tent, or shelter site shall be provided with a picnic table and trash receptacle. The park management shall dispose of refuse from said containers by transporting the refuse in a closed truck or in enclosed containers or bags to an approved disposal area at least once a week.

2. A campground shall provide water and sewerage systems, sanitary stations, and convenience facilities in accordance with the regulations of the State Plumbing Code. In no case shall less than one toilet, lavatory and shower be provided for each sex for every ten camping and tent sites. All recreational vehicle sites shall be equipped with water and sewage hook-ups, connected to approved distribution or disposal systems.

3. Fire extinguishers capable of dealing with electrical and wood fires shall be kept in all service buildings. A suitable ingress and egress shall be provided so that every campground may be readily serviced in emergency situations. Twenty-four hour emergency communication service (e.g. telephones) shall be provided.

4. Each campsite shall be provided with a masonry or metal fireplace approved in writing by the fire chief.

D. Planning and Review.

1. Roads, parking, campsites and required facilities shall be planned in accordance with the basic principles outlined below and shall be shown on the proposed plan which is submitted for review and approval as a conditional use.

a. A logical sequence of entry and circulation should be created: entrance, administration and storage, parking, campsites, toilets and laundry, playing fields or shoreline.

b. Campsites should be clustered in groups according to intensity of use (low density, medium density, etc.) and also related to common support service areas (laundries, play areas, etc.) serving a number of campsite clusters. The purpose is to minimize road length, increase accessibility, and preserve open space.

c. Footpaths and roads should follow "desire lines" of pedestrian and vehicular movement between campsites and all jointly used facilities. Parking areas may be grassed, reinforced with open concrete blocks.

d. Access roads shall be laid out as loops to the greatest extent that is practicable, although "cul-de-sacs" or "dead-ends" may be allowed to serve up to 20 campsites.

2. An erosion and sedimentation control plan meeting the standards of the *Maine Erosion and Sediment Control BMP's* manual, published by the Maine Department of Environmental Protection, March 2003. In addition to data on soils, slopes and drainage, a vegetation map showing the following items may be required:

a. The major types of vegetation should be identified and described (as to age, height, openness or density, and pattern either natural or reforested).

b. New plantings should be selected to provide screening and shelter, to tolerate existing and proposed site conditions, and to blend compatibility with existing natural vegetation.

c. All vegetative clearing should avoid creating straight line edges between open land and surviving stands.

e. Areas of activity and/or traffic should be sited to avoid wildlife areas (such as thickets for birds and small mammals, or deer yards and trails).

8.2 Home Occupation.

A home occupation shall be permitted if it complies with all of the requirements of this section.

A. The use of a dwelling unit for a home occupation shall clearly be incidental and subordinate to its use for residential purposes.

B. A home occupation shall be carried on by residents of the dwelling unit.

C. A home occupation may not alter the residential character of the structure or neighborhood, nor change the character of the lot from its principal use as a residence.

D. The home occupation shall be carried on wholly within the principal or accessory structures. The outside storage or display of materials or products shall be screened from view from the abutting properties and street.

E. The Performance Standards in Article VII of this ordinance shall apply. If additional parking spaces are provided, they shall be located to the rear or side yard of the principal structure but not within the yard setbacks.

F. One non-illuminated sign, no larger than four square feet may be erected on the premises.

G. The sale of products shall be limited to those which are crafted, assembled, or substantially altered on the premises, to catalog items ordered off the premises by customers and to items which are accessory and incidental to a service which is provided on the premises.

H. A home occupation shall not involve the use of heavy commercial vehicles for delivery from or to the premises.

I. A home occupation shall not create greater traffic than normal for the area it is located in or generate more than 20 vehicle trips/day.

8.3 Hotels and Motels.

For traffic safety on and immediately adjoining each motel or hotel and to assure health, safety and welfare of hotel occupants and of the neighborhood generally, the following land, space, building, traffic, utility, and service design requirements shall be complied with.

A. The minimum lot size for any motel, or hotel shall contain not less than three acres of total area. The minimum frontage shall be ten times the posted speed limit of the most traveled way serving the development but not less than 200 feet lot width at the street and throughout the first 200 feet of depth of said lot back from the street. Access driveways into the development shall be at an angle no less than 30 degrees and no more than 45 degrees to facilitate movement of traffic off the public way and onto the property. Driveways shall be separated by a minimum of 100 feet. The curb radius of the intersection of the driveway to public way shall be no less than 30 feet. Access and egress drives shall not exceed a slope of six percent for less than 60 feet onto the property.

B. No part of any building on a motel lot shall be closer than 60 feet to the front lot line, rear lot line or either side line of such lot. A green space, not less than 20 feet wide, shall be maintained open and green with grass, bushes, flowers or trees all along each side lot line, the rear lot line, the front line of such lot, except for entrance and exit driveways. The green space shall not be used for automobile parking.

C. Buildings on a motel lot shall not cover more than 15 percent of the area of the lot.

D. Each motel rental unit shall contain not less than 200 square feet habitable floor area enclosed by walls and roof, exclusive of any adjoining portions of roofed or covered walkways.

Each motel rental sleeping room shall not be less than 12 by 15 feet horizontal dimensions, exclusive of bath. Each rental unit shall include private bathroom facilities.

E. On each motel/hotel lot one apartment may be provided for resident owner, manager, or other responsible staff person.

F. Hotel building construction plans shall be reviewed and approved by the State Fire Marshal's Office.

G. Parking stalls shall be designed to accommodate the traveling public by a minimum stall width of 11 feet and stall depth of 23 feet for perpendicular stalls. Angled parking stall width and depths shall be increased by ten percent and 25 percent above the standards contained in this ordinance.

H. All motels and hotels shall be connected to the public sewer and water system. Accommodations providing kitchen facilities for the traveling public shall be considered as dwelling units and shall be required to meet the residential density requirements of the appropriate district.

I. Location Restrictions

In Districts R1, R2 & R3 Hotels are allowed only on major highways (Route 236 or Route 9) and subdivisions approved for commercial use.

8.4 Kennels and Veterinary Hospitals.

A. Structures or pens for housing or containing the animals shall be located not less than 100 feet from the nearest residence existing at the time of permit.

B. All pens, runs, or kennels, and other facilities shall be designed, constructed, and located on the site in a manner that will minimize the adverse effects upon the surrounding properties. Among the factors that shall be considered are the relationship of the use to the topography, natural and planted horticultural screening, the direction and intensity of prevailing winds, the relationship and location of residences and public facilities on nearby properties, and other similar factors.

C. The owner or operator of a kennel shall maintain the premises in a clean, orderly, and sanitary condition at all times. No garbage, offal, feces, or other waste material shall be allowed to accumulate on the premises. The premises shall be maintained in a manner that they will not provide a breeding place for insects, vermin or rodents.

D. Temporary storage containers for any kennel or veterinary wastes containing or including animal excrement shall be kept tightly covered at all times, and emptied no less frequently than once every four days. Such containers shall be made of steel or plastic to facilitate cleaning, and shall be located in accordance with the setbacks required for outdoor runs.

E. If outdoor dog "runs" are created, they shall be completely fenced in, and shall be paved with cement, asphalt or a similar material to provide for cleanliness and ease of maintenance.

F. Any incineration device for burning excrement-soaked waste papers and/or animal organs or remains shall be located a minimum distance of 400 feet from nearest residence other than the applicants, and shall have a chimney vent not less than 35 feet above the average ground elevation. The applicant shall also provide evidence that he/she has obtained approval from the Maine Department of Environmental Protection for the proposed incinerator, and that it meets state standards for particulate emissions, flue gas temperature, and duration of required flue temperatures.

G. All other relevant performance standards in Article VII of this ordinance shall also be observed. The Department of Agriculture, Food and Rural Resources Division of Animal Health & Industry Rules Governing Animal Welfare shall apply.

8.5 Mobile Home Parks.

Except as stipulated below, mobile home parks shall meet all the requirements for a residential subdivision, and shall conform to all applicable state laws and local ordinances or regulations. Where the provisions of this section conflict with specific provisions of the Subdivision Regulations for the Town of Berwick, Maine, the provisions of this section shall prevail.

A. Lot Area and Lot Width Requirement.

Notwithstanding the dimensional requirements table located in Section 6.3 of this ordinance, lots in a mobile home park shall meet the following lot area and lot width requirements.

1. Lots served by public sewer:

Minimum lot area:	6,500 square feet
Minimum lot width:	50 feet

2. Lots served by individual subsurface wastewater disposal systems:

Minimum lot area:	20,000 square feet
Minimum lot width:	100 feet

3. Lots served by a central subsurface wastewater disposal system approved by Maine Department of Human Services:

Minimum lot area:	12,000 square feet
Minimum lot width:	75 feet

4. 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.

B. Unit Setback Requirement.

1. On lots 10,000 square feet in area or larger, structures shall not be located less than 15 feet from any boundary lines of an individual lot. On lots less than 10,000 square feet in area, structures shall not be located less than ten feet from any boundary lines of an individual lot.

2. On lots which abut a public way either within the park or adjacent to the park, structures shall meet the front setback requirements in the dimensional requirements table in Section 6.3 of this ordinance.

C. Buffering.

If a park is proposed with a residential density at least twice the density of adjacent development in existence, or at least twice the density permitted in the Land Use District in which the park is located if the neighboring land is undeveloped, the park shall be designed with a continuous landscaped area not less than 50 feet in width which shall contain no structures or streets. The first 25 feet of the buffer strip as measured from the exterior boundaries of the park shall contain evergreen shrubs, trees, fences, walls or any combination which forms an effective visual barrier to be located on all exterior lot lines of the park, except that ways shall be kept open to provide visibility for vehicles entering and leaving the park.

D. Open Space Reservation.

An area no less than ten percent of the total area of those lots with a lot area of 10,000 square feet or less shall be reserved as open space. The area reserved as open space shall be suitable to be used for recreational purposes or use by the residents of the park for storage. Generally, the reserved open space shall have slopes less than five percent, shall not be located on poorly or very poorly drained soils, and shall be accessible directly from roads within the park. The Planning Board may waive the requirement for open space when the park is located within one half mile of a publicly owned recreation area.

E. Road Design, Circulation, and Traffic Impacts.

Streets within a park shall be designed by a professional engineer, registered in the State of Maine.

1. Streets which are to be dedicated as public ways shall be designed and constructed in accordance with the Subdivision Regulations of the Town of Berwick, Maine.

2. Streets which the applicant proposes to remain private ways shall meet the following minimum geometric design standards.

a. Minimum right of way width: 23 feet

b. Minimum width of traveled way: 20 feet

3. Any mobile home park expected to generate average daily traffic of 200 trips per day or more shall have at least two street connections with existing public streets. Any street within a park with an average daily traffic of 200 trips per day or more shall have at least two street connections leading to existing public streets, other streets within the park, or other streets shown on an approved subdivision plan.

4. No individual lot within a park shall have direct vehicular access onto an existing public street.

5. The intersection of any street within a park and an existing public street shall meet the following standards.

a. Angle of intersection. The desired angle of intersection shall be 90 degrees. The minimum angle of intersection shall be 75 degrees.

b. Maximum grade within 75 feet of intersection. The maximum permissible grade within 75 feet of the intersection shall be two percent.

c. Minimum sight distance. A minimum sight distance of ten feet for every mile per hour of posted speed limit on the exiting road shall be provided.

d. Distance from other intersections. The centerline of any street within a park intersecting an exiting public street shall be no less than 125 feet from the centerline of any other street intersecting that public street.

6. 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 registered professional engineer with experience in transportation engineering.

7. Privately owned stormwater management facilities shall be maintained in accordance with Article 7.22.

F. Ground Water Impacts.

1. Assessment Submitted. Accompanying the application for approval of any mobile home park which is not served by public sewer shall be an analysis of the impacts of the proposed mobile home park on ground water quality. The hydrogeologic assessment shall be prepared by a certified geologist or registered professional engineer experienced in hydrogeology and shall contain at least the following information.

- a. A map showing the basic soils types.
- b. The depth to the water table at representative points throughout the mobile home park.
- c. Drainage conditions throughout the mobile home park.
- d. Data on the existing groundwater quality, either from test wells in the mobile home park or from existing wells on neighboring properties.
- e. 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 1,000 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.
- f. A map showing the location of any subsurface wastewater disposal systems and drinking water wells within the mobile home park and within 200 feet of the mobile home park boundaries.

2. Standards for Acceptable Ground Water Impacts.

- a. Projections of ground water quality shall be based on the assumption of drought conditions (assuming 60 percent of annual average precipitation).
- b. No mobile home park shall increase any contaminant concentration in the groundwater to more than one half of the Primary Drinking Water Standards. No mobile home park shall increase any contaminant concentration in the groundwater to more than Secondary Drinking Water Standards.
- c. 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.
- d. 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 percent of the ambient concentration.

3. Subsurface wastewater 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.

G. No development or subdivision which is approved under this section as a mobile home park may be converted to another use without the approval of the Planning Board, and meeting the

appropriate lot size, lot width, setback and other requirements. The plan to be recorded at the Registry of Deeds and filed with the municipality shall include the following restrictions 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 manufactured housing unit as defined in this ordinance shall be located within the park.

H. Location Restrictions

In the SC/I district mobile homes are only allowed on major highways (Route 236 or Route 9), or where public water and sewer services are available within 2,000 ft. of the property line.

8.6 Apartment Buildings and Multi-Family Developments.

A. Apartment buildings and multi-family developments may be approved by the Planning Board in accordance with Land Use Table of this ordinance. All proposals to convert existing structures to multi-family use or to construct apartment buildings and multi-family developments shall be in conformance with the General Performance Standards of Article VII, Section 9.7 Conditional Use Permits and Site Plan Review, the design requirements listed below or the Subdivision Regulations of the Town of Berwick, Maine

B. Applications shall include: a map of the area, dimensions, boundaries and principal elevations of the land for which approval is sought; the names of all property owners within 200 feet of the proposed site, as found on the most recent tax list; building layout and general construction plans; a site plan of all driveways and parking areas proposed to be constructed; and other information which addresses all appropriate performance standards and design requirements and all appropriate factors to be considered in evaluating proposals.

C. Design Requirements.

1. Density: Each unit of the apartment building(s) or multi-family development requires the same density as single family dwellings in that district. Land required for circulation (exclusive of parking) and land classified by the Natural Resource Conservation Service as having seasonal highwater table at or above the surface, for at least several months every year, shall not be included in meeting the minimum lot area requirements. This includes all very poorly drained soils and some poorly drained soils as classified by the Natural Resource Conservation Service.

2. All apartment buildings and all dwellings in a multi-family development (This does not include two-family, or owner occupied units) shall be connected to the Berwick water supply and distribution system. The applicant shall demonstrate by a signed letter from an authorized representative of the water department that an adequate water supply can be provided to the development at an adequate pressure for fire fighting purposes.

3. Where available fire hydrants shall be located so that they are not more than 600 feet from any building, as hose is laid on the street.

4. All residential buildings shall be connected to a public sewer system where it exists. The applicant shall submit to the Planning Board a letter from the Superintendent of the Berwick Sewer District indicating that service is available and the sewage from the development can be adequately treated.

5. It shall be the responsibility of the owner to provide for rubbish disposal, snow removal, and site maintenance. Privately owned stormwater management facilities shall be maintained in

accordance with Article 7.22. All outdoor storage areas for waste collection shall be enclosed by a wooden or masonry screen at least six feet in height. A 50 foot landscaped buffer shall be provided along all property boundaries.

6. Storm water and surface drainage systems shall be designed in accordance with the Subdivision Regulations of the Town of Berwick, Maine.

7. Access, Circulation, and Parking.

a. The proposed development shall provide for safe access to and from public or private roads. Safe access shall be assured by providing an adequate number and location of access points, with respect to sight-distances, intersections, schools, and other traffic-generators. All corner lots shall be kept clear from visual obstructions higher than three feet above ground with respect to sight-distances, intersections, schools, and other traffic-generators. All corner lots shall be kept clear from visual obstructions higher than three feet above ground level, for a distance of 25 feet, measured along the intersecting street lines.

b. The proposed development shall not have an unreasonable adverse impact on the public road system and shall assure safe interior circulation within its site, by separating pedestrian and vehicular traffic and by providing adequate parking and turn-around areas.

c. All developments containing 15 or more dwelling units may be required by the Planning Board to have more than one street access (for emergency and safety purposes). No more than two accesses shall be allowed on any single street or roadway.

8.7 Professional Offices in the Urban Residential District.

In the urban residential district, professional offices may be permitted as conditional uses in accordance with applicable standards and the provisions below.

A. New professional offices shall be located only within existing buildings in order to retain the essential character of the neighborhood, except as allowed in Section D below.

B. Parking for professional offices shall be located to the side or rear of the building, and shall be screened from view from all streets and abutting residential properties.

C. Exterior alterations shall be minimized and shall be similar to the original architectural style of the building.

D. In special situations where a building is extremely dilapidated and structurally unsound and where reuse is therefore not practicable or economically feasible, or where a building is not judged to be a significant component of the neighborhood's overall architectural and historic character, the Planning Board may approve plans to replace an existing residential building with a proposed new professional office building whose scale and design would be appropriate to the site and to the neighborhood. The Board shall seek the recommendation of a recognized architectural authority before granting permission to demolish.

8.8 Cluster Developments.

A. Purpose. The purpose of these provisions is to allow for new concepts of housing development where variations of design may be allowed, provided that the net residential density shall be no greater than is permitted in the district in which the development is proposed. Notwithstanding other provisions of this ordinance relating to dimensional requirements, the Planning Board, in reviewing and approving proposed residential developments located in the town, may modify said provisions related to dimensional requirements to permit flexibility in approaches to housing and environmental design in accordance with the following standards. This shall not be construed as granting variances.

B. Application Procedure.

1. The Planning Board may require subdivision development on reduced lot size in return for open space when greater than ten units are proposed and/or more than 50 percent of the parcel is comprised of prime agriculture or forest land based on the Town's Prime Farmland and Agriculture District Map found in the Town Code Enforcement Office. The developer shall submit a written application to the Board for cluster development.

2. Two sketch plans shall be submitted with one layout as a standard subdivision and the second as a cluster development indicating open space and significant natural features. Each lot in the standard subdivision shall meet the minimum lot size and lot width requirements of this ordinance, and if not serviced by public sewer have an area suitable for subsurface wastewater disposal according to the Maine Subsurface Wastewater Disposal Rules. The lots shall be designed according to the following guidelines:

- a. Wherever possible, side lot lines shall be perpendicular to the street.
- b. The subdivision of tracts into parcels with more than twice the required minimum lot size shall be laid out in such a manner as either to provide for or preclude future division.
- c. If a lot on one side of a stream, road or other similar barrier fails to meet the minimum requirements for lot size, it may not be combined with a lot on the other side of the stream or road to meet the minimum lot size.
- d. The ratio of lot length to width shall not be more than three to one. Flag lots and other odd shaped lots in which narrow strips are joined to other parcels in order to meet minimum lot size requirements are prohibited.

The number of buildable lots or dwelling units in the cluster development shall in no case exceed the number of lots or dwelling units in a standard subdivision. Estimated costs of infrastructure development (roads, utilities, etc.) shall accompany the plan.

3. The written statement shall describe the natural features which will be preserved or enhanced by the cluster approach. Natural features include but are not limited to moderate to high value wildlife and waterfowl habitats, important agricultural soils, moderate to high yield aquifers and important natural or historic sites identified by the Comprehensive Plan as worthy of preservation.

4. The statement shall also compare the impacts upon the town from each plan. Examples of impacts are municipal cost for roads, school busing, solid waste removal and disposal, utility efficiencies, recreational opportunities, protection of flood water storage areas, environmental impacts on sensitive lands caused by construction activities, underground utilities, reclamation of land and provision of land for conservation use.

5. Within ten days of receiving the application, the Board shall invite comments on the application from the Conservation Commission, the Recreation Commission, other appropriate town agencies and abutters. Within 30 days of receiving the application, the Board shall determine whether to allow the subdivision to be developed in accordance with the cluster standards of this section.

C. Basic Requirements for Cluster Developments.

1. Cluster developments shall meet all requirements of the Subdivision Regulations of the Town of Berwick, Maine and other applicable town ordinances, including the Performance Standards of Article VII of this ordinance.

2. Each building shall be an element of an overall plan for site development. Only developments having a total site plan for structures will be considered. The developer shall illustrate the placement of buildings and the treatment of spaces, paths, roads, service and parking and in so doing shall take into consideration all requirements of this section and of other relevant sections of this ordinance.

3. The net residential acreage shall be calculated by taking the total area of the lot and subtracting, in order, the following:

- a. 15 percent of the area of the lot to account for roads and parking.
- b. Portions of the lot which, because of existing land uses or lack of access, are isolated and unavailable for building purposes or for use in common with the remainder of the lot, as determined by the Planning Board.
- c. Portions of the lot shown to be in a floodway as designated in the Flood Hazard Boundary Map prepared by the Federal Insurance Administration.
- d. Portions of the lot which are unsuitable for development in their natural state due to topographical drainage or subsoil conditions such as, but not limited to:
 - i. slopes greater than 33 percent
 - ii. organic soils
 - iii. wetland soils
 - iv. 50 percent of the poorly drained soils.
- e. Portions of the lot subject to rights of way.
- f. Portions of the lot located in the resource protection zone.
- g. Portions of the lot covered by surface water.
- h. Portions of the lot utilized for storm water management facilities.

4. In order to determine the maximum number of dwelling units permitted on a tract of land, the net residential acreage shall be divided by the minimum lot size required in the district. A high-intensity soil survey map, certified by a registered soil scientist licensed in the State of Maine, shall be submitted. No building shall be sited on soil classified as being very poorly drained.

5. Unless a community sewage collection and treatment system is provided, no lot shall be smaller in area than 30,000 square feet. Within the Shoreland Zone, no lot shall be reduced below the minimum lot size otherwise required.

6. At least 30 percent of the site must be reserved in perpetuity as common open space. Of the minimum open space required, at least 50 percent must be non-wetland soils and soils with slopes less than 25 percent, which are reasonably available for recreational purposes. Open space dedicated in excess of the minimum required area may contain any percentage of wetland soils or steep slopes. Open space should include the most sensitive resource areas of the property and should be designed in larger blocks of land, preferably as part of an integrated open space network, laid out to be contiguous with open space areas of similar character (whether permanently preserved or not) on adjacent parcels.

7. Every building lot that is reduced in area below the amount normally required should be within 1,000 feet of the common land.

8. The distance between principal buildings shall not be less than 50 feet.
9. No individual lot or dwelling unit shall have direct vehicular access onto a public road existing at the time of development.
10. Shore frontage shall not be reduced below the minimum normally required in the zone.
11. Where a cluster development abuts a body of water, a usable portion of the shoreline, as well as reasonable access to it, shall be a part of the common land.
12. Buildings shall be oriented with respect to scenic vistas, natural landscape features, topography, solar energy, and natural drainage areas, in accordance with an overall plan for site development.
13. The applicant shall demonstrate the availability of water adequate for domestic purposes as well as for fire safety. The Planning Board may require the construction of storage ponds and dry hydrants. The location of all wells shall be shown on the plan.
14. The location of subsurface wastewater disposal systems and an equivalent reserve area for replacement systems shall be shown on the plan. The reserve areas shall be restricted so as not to be built upon. The report of a licensed site evaluator shall accompany the plan. If the subsurface disposal system is an engineered system, approval from the Department of Human Services, Division of Health Engineering shall be obtained prior to Planning Board approval.
15. Utilities shall be installed underground wherever feasible. Transformer boxes, pumping stations, and meters shall be located so as not to be unsightly or hazardous to the public.
16. If a cluster development is proposed with a residential density at least twice the density of adjacent development in existence, or at least twice the density permitted in the land use district in which the development is located if the land is undeveloped, the development will be designed with a continuous landscaped area not less than 50 feet in width which shall contain no structure or streets. The first 25 feet of the buffer strip, as measured from the exterior boundaries of the development shall contain evergreen shrubs, trees, fences, walls, or any combination which forms an effective visual barrier to be located on all exterior lot lines of the development.

D. Dedication and Maintenance of Common Open Space Facilities.

1. Common open space shall be dedicated upon approval of the project as a separate lot of record and shall be used only for non-commercial recreation, agriculture or conservation. Easements for public utilities, or structures accessory to non-commercial recreation, agriculture or conservation, may be permitted; however the land shall not be further divided.
2. The common open space(s) shall be shown on the development plan and with appropriate notation on the face thereof to indicate that:
 - a. the common open space shall not be used for future building lots; and
 - b. a part of all of the common open space may be dedicated for acceptance by the town.
 - c. A part or all of the common space may be dedicated for acceptance by a land conservation trust which has its principle purpose the conservation of land in its natural condition.
3. If any or all of the common space is to be reserved for ownership by the residents, the by-laws of the proposed homeowners' association shall specify maintenance responsibilities and

shall be submitted to the Planning Board prior to approval. Privately owned stormwater management facilities shall be maintained in accordance with Article 7.22.

4. Covenants for mandatory membership in the association, setting forth the owners' rights and interest and privileges in the association and the common land, shall be reviewed by the Planning Board and included in the deed for each lot.

5. This homeowners' association shall have the responsibility of maintaining the common open space(s), and other common facilities until accepted by the town.

6. The association shall levy annual charges against all property owners to defray the expenses connected with the maintenance of open space, other common and recreational facilities and town assessments.

7. The developer shall maintain control of such open space(s) and be responsible for their maintenance until development sufficient to support the association has taken place. Such determination shall be made by the Planning Board upon request of the homeowners' association or the developer.

8.9 Restaurants.

A. The application for a permit shall state the maximum seating capacity of the restaurant. Any expansion or enlargement over the stated capacity shall require a new permit.

B. Any restaurant located within 500 feet of an existing public sewer line shall connect with the sewer system at the expense of the owners.

C. Location Restrictions

In the R3 district Restaurants are allowed only on major highways (Route 236 or Route 9) and subdivisions approved for commercial use.

8.10 Mineral Industry.

A. Topsoil, rock, sand, gravel and similar earth materials may be removed from locations where permitted under the terms of this ordinance only after a conditional use permit for such operations has been issued by the Planning Board.

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 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, so as to restore disturbed areas and to protect the public health and safety.

The following earth-moving activities shall be allowed without a conditional use permit from the Planning Board:

1. Except in the Shoreland Zone, the removal of less than 50 cubic yards of material from any lot in any 12 month period.

2. The removal or transfer of material incidental to construction, alteration or repair of a building or in the grading and landscaping incidental thereto; and

3. The removal or transfer of material incidental to construction, alteration or repair of a public or private way or essential service.

All other earth-moving, processing and storage shall require conditional use approval from the Planning Board.

B. Submission Requirements.

1. Applications to the Planning Board for a conditional use permit for the excavation, screening storage of soil (including topsoil), peat, loam, sand, gravel, rock, or other mineral deposits shall be accompanied by a plan prepared according to the specifications and performance standards herein, in compliance with applicable state laws and accompanied by all required state permits or licenses.

2. The applicant shall submit plans of the proposed extraction site showing the property lines and names of abutting owners and ways, indicating by not greater than five foot contour intervals, related to U.S. Geodetic Survey data, the location and slope of the grades, existing and as proposed upon completion of the extraction operation; and detailing proposed fencing, buffer strips, signs, lighting, parking and loading areas, entrances and exits; together with a written statement of the proposed method, regularity, working hours and total proposed rehabilitation and restoration of the site upon completion of the operation.

3. The Board may require the additional submission of a hydrogeologic study to determine the effects of the proposed activity on ground water movement and quality within the general area.

C. Performance Standards.

1. No part of any extraction operation shall be permitted within 100 feet of any property or street line, or 300 feet from the property line of an existing residence or edge of public or private right of way or street line, except that drainage ways to reduce run-off into or from the extraction area may be allowed up to 100 feet of such line. Natural vegetation providing year round screening shall be left and maintained on the undisturbed land.

2. If any standing water accumulates, the site must be fenced in a manner adequate to keep children out. Measures shall be taken to prevent or halt the breeding of insects.

3. No slopes steeper than three feet horizontal to one foot vertical shall be permitted at any extraction site unless a fence at least six feet in height is erected to limit access to such locations.

4. Before commencing removal of any earth materials, the owner or operator of the extraction site shall present evidence to the Planning Board of adequate insurance against liability arising from the proposed extraction operations, and such insurance shall be maintained throughout the period of operation.

5. Any topsoil and subsoil suitable for purposes of revegetation shall, to the extent required for restoration, be stripped from the location of extraction operations and stockpiled for use in restoring the location after extraction operations have ceased. Such stockpiles shall be protected from erosion, according to the erosion prevention performance standards of this section.

6. Erosion and sedimentation control measures shall be designed and built according to the standards of the *Maine Erosion and Sediment Control BMP's* manual, published by the Maine Department of Environmental Protection, March 2003. Sediment shall be trapped by diversions, silting basins, terraces and other measures designed by a professional engineer.

7. Lagooning shall be conducted in such a manner as to avoid creation of fish trap conditions. The application shall submit written approval from the Department of

Environmental Protection and Department of Inland Fisheries and Wildlife, as applicable, prior to consideration by the Planning Board.

8. The hours of operation at any extraction site shall be limited as the Planning Board deems advisable to ensure operational compatibility with residents of the town.

9. All access/egress roads leading to/from the extraction site to public ways shall be treated with suitable materials to reduce dust and mud for a distance of at least 100 feet from such public ways.

10. No equipment debris, junk or other material shall be permitted on an extraction site except those directly related to active extraction operations, and any temporary shelters or buildings erected for such operations and equipment used in connection therewith shall be removed within 30 days following completion of active extraction operations.

11. Within six months of the completion of extraction operations at any extraction site or any one or more locations within any extraction site, ground levels and grades shall be established in accordance with the approved plans filed with the Planning Board so that:

a. All debris, stumps, boulders, and similar materials shall be removed and disposed of in an approved location or, in the case of inorganic materials, buried and covered with a minimum of two feet of soil.

b. The extent and type of fill shall be appropriate to the use intended. The applicant shall specify the type and amount of fill to be used.

c. Stormwater management facilities will be designed according to Article 7.16. Storm drainage and water courses shall leave the location at the original natural drainage points where feasible, and in a manner such that the amount of drainage at any point does not significantly increase.

d. At least four inches of topsoil or loam shall be retained or obtained to cover all disturbed areas, which shall be reseeded and properly restored to a stable condition adequate to meet the provisions of the *Maine Erosion and Sediment Control BMP's* manual, published by the Maine Department of Environmental Protection, March 2003.

e. The final graded slope shall be two to one slope or flatter.

D. Permit Approval.

1. All plans and supporting material shall be submitted to the Planning Board for their consideration with respect to the effect of the proposed operation upon existing and foreseeable traffic patterns within the town, upon existing or approved land uses which may be affected by the operation and implementation of comprehensive plan policies. The Planning Board may recommend changes to the application for resubmission to the Planning Board.

2. The Planning Board shall hold a public hearing on the application following the same notification requirements for conditional uses. The Planning Board shall make findings of fact and render a written decision specifying whether, and under what conditions, the proposed operation shall be permitted.

E. Existing Operations.

1. If any existing operation is discontinued for a period of more than three years, then no earth removal shall commence, continue or resume until a site plan review permit has been issued by the Planning Board. "Discontinuation" is defined as being the excavation, processing or storage of less than ten cubic yards of material.

2. Existing operations must submit to the Code Enforcement Officer within 90 days of the effective date of this chapter a map indicating the area within which earth removal activity is anticipated within the five year period and the area which has already been subject to earth removal activity. If no map is submitted within 90 days then the operation must cease, and no earth removal activities shall commence, continue or resume until conditional use approval has been granted by the Planning Board.

3. Within 30 days of the effective date of this chapter or amendments, the Code Enforcement Officer shall notify by certified mail, return receipt requested, the owners of all property which to the best of his/her knowledge may come under the provisions of this section. Said notification shall inform the property owners of the above submission requirement. Failure of any property owner, after proper notification to submit the required information to the Code Enforcement Officer within 90 days shall be a declaration of inactivity. No earth removal activity shall commence, continue or resume until conditional use approval has been granted by the Planning Board.

8.11 Waste Facilities.

A. Submissions Requirements.

1. Applications to the Planning Board for a conditional use permit for a waste facility shall be accompanied by a plan prepared according to the specifications and performance standards set forth herein and a written statement detailing the project's compliance with applicable state, local and federal laws, regulations and ordinances. The application shall be accompanied by evidence that the applicant has applied for all required state or federal permits or licenses. The application shall be accompanied by a non-refundable application fee of \$100 per acre.

2. The applicant shall submit plans of the proposed waste facility showing the property lines and names of abutting owners, and ways, indicating by not greater than two foot contour intervals, related to U.S. Geodetic Survey Data, the location and slope of the grades, existing and as proposed upon completion of the operation, and detailing any structures, proposed fencing, buffer strips, signs, lighting, parking and loading areas, entrances and exits; together with a written statement of the proposed operation, working hours and total proposed rehabilitation and restoration of the site upon completion of the operation, if applicable.

3. A hydrogeologic study performed by a qualified hydrogeologist to determine the effects of the proposed activity on ground water movement and quality within the area of the site.

4. The Planning Board shall have the authority to reasonably require submittal of test results or such additional studies or tests as may be necessary to properly evaluate the application and shall have the authority to hire such independent expert consultants to review all the studies and testing done by the applicant for adequacy and completeness, all of which shall be at the applicant's expense.

5. The applicant shall provide evidence of sufficient right, title and interest in the property which is the subject of the application to go forward with the project if the project receives the approval of the Planning Board.

6. The applicant shall provide evidence of sufficient financial and technical ability to construct, maintain, operate, and close the waste facility in accordance with applicable, federal, state and local statutes, ordinances and regulations.

B. Performance Standards.

1. The performance standards set forth in the Site Plan Review Section (9.7) of this ordinance shall be complied with.

2. Monitoring and verification: In addition to the ground water monitoring wells required for waste facilities by the Site Plan Review Section (9.7.) of the ordinance, the applicant shall provide such additional ground water monitoring wells as are determined necessary by the consultants employed by the Planning Board to ensure protection of ground water on the entire site and the surrounding area. Monitoring wells shall be a minimum of 30 feet deep and samples shall be taken at a frequency of every 30 days after the facility start-up. Results of sampling tests shall be certified by the person conducting the sampling and submitted to the Planning Board or, at the Planning Board's request, to an independent consultant selected by the Planning Board to review the test results. If the Planning Board determines that review by an independent consultant is necessary, the expense of such review shall be borne by the applicant.

3. The applicant shall post a performance bond, provide liability insurance, a cash escrow account, or other security acceptable to the town to ensure the town is protected from any adverse environmental impacts associated with the construction, operation, maintenance or closure of the waste facility. The Planning Board shall annually review the adequacy of the bond, insurance, or other security provided and shall require such modifications in the amount or nature of the security as may be necessary to ensure that the town is fully protected.

4. The applicant shall provide for routine maintenance and general cleanliness of the entire facility site, and shall undertake any reasonable steps necessary to control any litter or debris, wind-blown paper, other light materials by using suitable permanent or portable fencing and other natural barriers or other effective devices.

5. The operator shall insure that the facility site is provided with a drainage system adequate to minimize surface water contact with solid waste and to prevent erosion and the collection of standing water.

6. The applicant shall provide evidence that the person or persons responsible for the day to day operations of the waste facility have the technical expertise required to operate the facility safely.

7. Transfer of ownership of the waste facility or the site on which it is located shall require the prior written consent of the Planning Board, and the transferee shall demonstrate to the satisfaction of the Planning Board that it has the technical and financial capacity to operate the waste facility in accordance with applicable state, local and federal regulations.

8. The applicant shall agree to allow the town, its representatives and/or agents reasonable access to the waste facility as needed to perform inspections to ensure continued compliance with the standards set forth in this ordinance.

9. The applicant shall be responsible for insuring that closure of the facility occurs in accordance with applicable federal, state and local standards. In recognition of that responsibility the applicant shall submit and update as necessary an operation plan and a final closure plan in sufficient detail to establish that the facility will be closed safely at the termination of its operations.

10. The spreading of septage sludge shall not extend closer than 300 feet to any property line.

C. Permit Approval.

1. All plans and supporting material shall be submitted to the Planning Board for consideration with respect to the effect of the proposed operation upon existing and foreseeable traffic patterns within the town and upon existing or approved land uses which may be affected by the operation and implementation of comprehensive plan policies. The Planning Board may recommend changes to the application for resubmission to the Planning Board.

2. The Planning Board shall hold a public hearing on the application, following the same notification requirements for all conditional uses. The Planning Board shall make findings of fact and shall render a written decision specifying whether, and under what conditions, the proposed waste facility shall be permitted. Issuance of a conditional use permit is contingent upon the applicant demonstrating that it has received any other required federal or state permits or licenses.

8.12 Agriculture and Animal Husbandry.

The following restrictions apply to agriculture and animal husbandry.

- a. All pastures, barns, barnyards and other areas where the livestock animals or fowl are kept, housed, fed or cared for shall be a minimum of 100 feet from the nearest dwelling other than the applicant's.
- b. Uncovered manure shall be kept 150 feet from the nearest dwelling other than the applicant's and 300 from a well.
- c. All feed and grain must be kept in enclosed rodent proof containers.
- d. All paddocks, barnyards or other enclosures must be adequately fenced to contain livestock, animals or fowl.

8.13 Owner Occupied Apartments.

The Code Enforcement Officer may approve the addition of one dwelling unit to an existing single family dwelling and which must comply with the following standards.

1. The existing dwelling unit must have a minimum of 1,200 gross square footage of living area to be considered for an accessory apartment. The accessory apartment shall not exceed 30 percent of the total living area of the building.
2. "Owner-occupied" means that either the principal dwelling unit or the accessory apartment is occupied by a person who has a possessory interest in the real estate, who bears all or part of the economic risk of decline in value of the real estate and who receives all or part of the remuneration, if any, derived from the lease or rental of the other dwelling unit.
3. A single family dwelling as contained in this section means the building proposed for conversion and any accessory building attached. Only one accessory apartment shall be permitted per lot. An owner-occupied apartment, however, shall not be allowed in a single family dwelling within an approved subdivision that contains a note or condition on the plan recorded in the York County Registry of Deeds that specifically allows only single family residential uses.
4. There will be no external expansion of the structure, except for stairwells and elevators.
5. The dimensional standards found in Section 6.3 are waived with the exception of the standards for lot coverage, which can not be increased above set standards or that which is existing at the time of the proposed conversion, whichever is greater.
6. Any request for an accessory apartment shall conform to all provisions of the Maine State Plumbing Code and no dwelling that is served by an on-site wastewater disposal system

shall be modified to create an accessory apartment until a site evaluation has been conducted by a licensed soil evaluator which demonstrates that a new system can be installed to meet the disposal needs of the dwelling units or the existing system has adequate capacity for the proposed use.

7. This provision shall not prohibit the conversion of a single family dwelling to a multiplex dwelling or the conversion of a duplex dwelling to a multiplex dwelling so long as said conversion complies with all district and zoning standards, including but not limited to dimensional requirements.

8. Upon approval by the Planning Board, the owner of the accessory apartment shall record within his/her deed at the York County Registry of Deeds that such dwelling shall be and is to remain "owner occupied" even upon future transactions.

8.14 Adult Business.

1. "Adult Business" means any business, a substantial or a significant portion of which consists of selling, renting, leasing, exhibiting, displaying or otherwise dealing in obscene materials which depict or describe any of the following:

- a. human genitals in a state of sexual stimulation or arousal;
- b. acts of human masturbation, sexual intercourse or sodomy;
- c. fondling or other erotic touching of human genitals, pubic region, buttock or female breast;
- d. less than completely and opaquely covered:
 - i. human genitals, pubic region
 - ii. buttock
 - iii. female breast below a point immediately above the top of the areola; and
- e. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

2. "Viewing booth" means any booth, cubicle, room or stall within the premises of an adult business used to display, by audio or visual reproduction, projection or other means, any of the materials described in subparagraph (2) above.

3. "Public building" means a building owned, operated or funded in whole or in part by the Town of Berwick which members of the general public have occasion to visit, either regularly or occasionally, such as, but not limited to, the town hall, the public library, the police station and fire stations.

4. Location of adult business restricted. No adult business shall be located:

a. In any zoning district other than the Rural Commercial Industrial (RC/I) District located on Route 4.

b. In any location where the customer entrance to the adult business would be closer than 1,000 feet, measured in a straight line without regard to intervening structures or objects, to the nearest point on the boundary of any property which is:

i. occupied by a residence, school, child care facility, park, playground, church or public building.

- ii. located in a residential zone, or
- iii. occupied by another adult business.

5. Outside displays prohibited. No materials described in subsection (2) above shall be visible from the exterior of the building in which the adult business is located.

6. Design of viewing booths. Viewing booths shall be designed, located and lighted so that the interior of each viewing booth is clearly visible from the interior common areas of the premises and visibility into the viewing booths shall not be blocked or obscured by any doors, curtains, partitions, drapes or any other visual barriers.

8.15 Automobile Graveyard, Automobile Recycling Business and Junkyards.

Automobile graveyards, automobile recycling facilities and junkyards shall meet the following standards:

A. The site of the yard must be enclosed by a visual screen at least six feet high and built in accordance with rules adopted by the Department of Transportation pursuant to 30-A M.R.S.A., Section 3759.

B. A vehicle with an intact engine or motor may not be stored within 100 feet of any body of water or freshwater wetland, as defined by 38 M.R.S.A., Section 436-A, Subsection 5.

C. A vehicle may not be dismantled or stored within 500 feet of a school, church, or public playground or park that existed on the date the permit was issued.

D. A vehicle may not be dismantled or stored over a sand and gravel aquifer or aquifer recharge area.

E. A vehicle containing fluids may not be dismantled or stored within the 100-year flood plain.

F. A vehicle may not be dismantled or stored within 100 feet of a well that serves as a public or private water supply, excluding a private well that serves only the automobile recycling business or the owner or operator's abutting residence.

G. A vehicle may not be located or dismantled closer than 20 feet from any lot line unless the operator has notarized written permission from the abutting property owner.

H. Dismantling of a vehicle must be performed in accordance with the following standards.

1. The battery must be removed.
2. Engine lubricant, fuel, transmission fluid, brake fluid and engine coolant must be drained into watertight, covered containers and must be recycled or disposed of in accordance with applicable federal or state laws, rules or regulations.
3. Fluids from a vehicle may not be permitted to flow or be discharged into or onto the ground.
4. A recycling operation must comply with all applicable federal or state laws related to hazardous materials.

8.16 Construction in Flood Hazard Areas.

In areas delineated as special flood hazards on the Berwick Flood Insurance Rate Maps prepared by the Federal Emergency Management Agency, all new construction, additions and

modifications to existing structures shall conform to the Town of Berwick Floodplain Management Ordinance effective May 19, 1998.

8.17 Accessory Structure.

No garage or other accessory detached structure shall be located in a required front setback. When located to the rear of the main building, one accessory structure, no larger than 160 square feet, and single story, may be setback at least ten feet from the side or rear lot lines.

8.18 Wireless Communication Facilities and Communications Towers.

A. Communication towers and antennas are permitted as a conditional use only, except as follows. The placement of antennas and associated equipment onto an existing structure may be allowed without a conditional use permit when they are designed to be incorporated into the architecture of new or existing buildings or into the fabric of other manmade or natural structures or features so as to be inconspicuous when viewed at any point beyond the limits of the host property. The placement of antennas and associated equipment may also be allowed without a conditional use permit when they are placed onto an existing communications tower or within an existing facility compound area at the base of an existing communications tower. A conditional use permit shall be required if the co-location of antennas or associated equipment exceeds the capacity of the existing communications tower or expands the perimeter of the existing facilities compound area at the base of the existing communications tower.

B. The maximum height of a communications tower shall be 199 feet including antenna. The height of an antenna shall be included in the total height limitation as allowed for a communications tower.

C. The tower shall be placed a minimum distance of 125 percent of the height of the tower from any boundary line to establish a safety zone. The Board of Appeals shall not be authorized to grant a variance from this requirement.

D. The tower shall not be lit unless mandated by the Federal Aviation Administration or other applicable state and federal requirements.

E. A new communications tower 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.

F. A new wireless communication facility and tower must comply with the current Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision Standards entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures" or its lawful successor.

G. The applicant shall present evidence to the Planning Board that there are no existing structures which may be used to support the antenna and associated equipment. The owner/operator of the tower is required to allow co-location until said tower has reached full antenna capacity. Space for any possible future accessory structures shall be shown on the plan.

H. A security fence to be approved by the Planning Board of not less than eight feet in height from the finished grade shall be provided around the Tower.

I. Prior to approval the applicant shall submit a guarantee acceptable to the town in an amount and form acceptable to the Board of Selectmen, taking into account the effects of inflation upon costs, sufficient to pay for the cost of removal of the facility. A wireless telecommunications facility that is not operated for a continuous period of 12 months shall be considered abandoned. The Code Enforcement Officer shall notify the owner of an abandoned facility in writing and order the removal of the facility within 90 days of receipt of the written notice. The owner of

the facility shall have 30 days from the receipt of the notice to demonstrate to the Code Enforcement Officer that the facility has not been abandoned. The Planning Board shall require the submission of proof of adequate insurance covering accident or damage.

If the owner fails to show that the facility is in active operation, the owner shall have 60 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 preconstruction condition, including the removal of roads, and reestablishment of vegetation.

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.

J. The applicant must meet all other pertinent sections of the Town of Berwick Land Use Ordinance.

K. Location Restrictions

Within the R1, LR, and SC/I Zoning Districts Wireless Communication Facilities must be installed on any existing tower, pole or structure capable of supporting such equipment.

8.19 Temporary Storage.

A. New.

1. Upon approval of the Code Enforcement Officer, truck boxes, portable or mobile trailers, vans or similar vehicles may be used for storage or display on a residential lot for a period not to exceed six months. The Planning Board may extend such approval for successive periods of six months if the Board finds that:

- a. The use does not diminish area requirements as set forth in that district.
- b. There is a valid, temporary need which cannot be met within the principal structure, and that adequate hardship can be shown.
- c. The initial approval or any renewal of the use will not in any way be detrimental to the neighboring properties including aesthetic appearance.
- d. The use is not intended as a permanent or long term use.
- e. The use is not intended to circumvent building area limitations for that district, or to prolong the use of facilities which have been outgrown.
- f. The facilities will be adequately screened from neighborhood properties and the street.
- g. The facilities will not be used as or intended for advertising for on or off premises purposes.
- h. The facilities are not intended for retail sales.

2. The above provisions do not prohibit the use of such temporary facilities as construction or job site office or equipment storage facilities during construction. No advertising other than the contractor's name shall be on the vehicle or facility and such signs meet the requirements of Section 7.12 Signs.

B. Existing.

1. Any truck box that is currently located in a residential zone may be grandfathered if the property owner can document that the truck box was on site prior to the effective date of this ordinance. Information from abutting property owners, in the form of a letter stating the existence of the truck box on or around a specific date, could assist in this documentation.

2. Any existing truck box that is currently in a residential zone must receive a permit documenting the container's existence, size, and location of the property, and this permit must be acquired within six months from the effective date of this ordinance. If a permit is not requested within one year from the effective date of this ordinance, the truck box must be removed.

3. Only one grandfathered truck box shall be allowed on any lot, even though more than one may currently exist.

8.20 Swimming Pools.

A fence shall be erected and maintained around every swimming pool, except that portable above-ground swimming pools with sidewalls of at least 24 inches in height are exempted. A dwelling house or accessory building may be used as part of this enclosure. All gates or doors opening through this enclosure shall be capable of being securely fastened at all times when not in actual use.

The fence shall be a good quality fence or wall not less than 4 feet in height above ground surface and of a character to exclude children. The fence shall be so constructed as not to have openings, holes or gaps larger than 4 square inches, except for fences constructed of vertical posts or louvers, in which case, the openings shall not be greater than 4 inches in width with no horizontal members between the top and bottom plates.

8.21 Automobile Hobbyist.

An automobile hobbyist shall comply with the screening requirements and operating standards in section 30-A M.R.S.A., Section 3754-A, as follows:

An automobile hobbyist may not be located within 1,000 feet of the right-of-way of federally funded streets to include Routes 4, 9 or 236, Pine Hill Rd. from town center to Ridlon Rd. intersection, or Hubbard Rd. from town center to Knox Ln. intersection, or within 600 feet of the right-of-way of any other street, except for those that meet the following performance standards:

Those automobiles and all associated automobile parts, equipment and accessories that are kept entirely screened from ordinary view from the highway at all times by natural objects, plantings or fences. Screening shall be:

1. At a height, density and depth sufficient to accomplish complete screening from ordinary view;
2. Well constructed and properly maintained at a minimum height of 6 feet;
3. Placed outside of the highway right-of-way; and
4. Acceptable to the code enforcement officer.

All automobile hobbyists shall comply with the following operating standards:

1. All fluids, including, but not limited to, engine lubricant, transmission fluid, brake fluid, power steering fluid, hydraulic fluid, engine coolant, gasoline, diesel fuel and oil, must be properly handled in such a manner that they do not leak, flow or discharge into or onto the ground or into a body of water;
2. A vehicle containing fluids may not be stored or dismantled within 100 feet of any body of water or freshwater wetland, as defined by Title 38, section 436-A, subsection 5; and

3. Junk, scrap metal, vehicles or other solid wastes may not be placed or deposited, directly or indirectly into inland waters, the ice of inland waters, or on the banks of inland waters in such a manner that they may fall or be washed into these waters.

8.22 Private Pond with or without a Dam.

No private pond, with or without a dam, may be created without a permit from the Code Enforcement Officer. Private ponds with a dam must show proof that such pond was designed by a State Licensed Professional Engineer.

8.23 Small Wind Energy Systems.

Definitions:

Rotor Diameter: Cross sectional dimension of the circle swept by the rotating blades.

Small Wind Energy System: A system of equipment located on a single lot that has an aggregate rated capacity of not more than 100kW that converts and then stores or transfers energy from the wind into usable forms of energy for use on the same lot as the system, or on an abutting lot in the case of a common system serving more than one principle use or structure. This equipment includes the base, blade, foundation, generator, nacelle, rotor, tower, transformer, vane, wired, inverter, batteries, or other components used in the systems. Small wind energy systems are allowed only as accessory uses or as structures and only one small wind energy system is allowed per lot.

Small Wind Energy System Height: The height above grade to the tip of the turbine blade when it reaches its highest elevation.

Tower Height: The height above grade of the fixed portion of the tower, excluding the wind turbine itself.

Tower: The structure on which the wind system is mounted. This includes a monopole, freestanding, or guyed structure that supports a wind generator.

Wind Turbine: The parts of the wind system including the blades, generator and tail.

Purpose:

The purpose of this section is to promote the safe, effective and efficient use of small wind energy systems.

Setbacks:

Set backs for the system tower shall be no closer to the property line than the 110% of the height of the system and in no instance closer than the required setback in the District. Guy wire anchors may not be closer to the property line than 10 feet.

Tower Height:

Height shall be limited to a maximum of 80 feet. The applicant shall provide evidence that the proposed tower height does not exceed the height recommended by the manufacturer of the system.

Design Requirements:

1. Access:

- (a) All ground mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
- (b) The tower shall be designed and installed such that public access via step bolts or a ladder is prevented for a minimum of 12 feet above the ground.

2. Blade clearance:

For all systems the minimum distance between the ground and any protruding blades shall be 15 feet as measured at the lowest point of the arc of the blades.

3. Appearance:

Towers shall maintain a galvanized steel finish unless FAA standards require otherwise or if owner is attempting to conform the tower to the surrounding environment and architecture, in which case it may be painted to reduce visual obtrusiveness.

4. Signs:

Towers shall not display any permanent or temporary signs, writing, systems, logos, or any graphic representation of any kind other than that of the manufacturer.

5. Lights:

No tower shall be lighted unless required by the FAA.

6. Noise:

Small Wind Energy systems shall adhere to the current language in Section 7.6 of this Ordinance.

Documents required:

The following must be submitted with the application for a Small Wind Energy system:

1. Plot plan showing:

- (a) A title block showing date, scale and arrow pointing north.
- (b) The Zoning District in which the Small Wind Energy System is proposed.
- (c) The setbacks of all existing and proposed structures or uses.
- (d) The location of all existing and/or proposed structures or uses.
- (e) Any overhead utility lines.

2. Wind system specifications, including manufacturer and model, rotor diameter, tower height, tower type (freestanding or guyed).

3. Tower Foundation blueprints or drawings.

4. Tower blueprint or drawing

5. Standard drawings and an engineering analysis of the systems tower, and certification by a professional engineer. This analysis shall include standards for ice and wind loading.

6. Date on approval from any small wind certification program that may apply.

7. Information showing that the generators and alternators to be used are constructed so as to prevent the emission of radio and television signals.
8. The applicant shall provide evidence that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

State and Federal Requirements:

1. Small wind energy systems must comply with applicable FAA regulations, including any necessary approvals for installations close to airports. Evidence of compliance or non-applicability shall be submitted with the application.
2. Small wind energy systems must comply with applicable building code, National Electric Code and other State and Federal requirements.

Removal of Unsafe Small Wind Energy Systems:

Any small wind energy system found unsafe by the CEO shall be shut down immediately and repaired by the owner to meet all federal, state or local safety standards or removed within 30 days. If the owner fails to remove the system as directed the CEO may pursue legal action to have the system removed at the owner's expense.

8.24 Elderly Housing

A. Elderly Housing may qualify for a 50% reduction in minimum lot size requirement when the application satisfies the standards outlined below:

1. All construction will be in conformance with all applicable Americans with Disabilities Act regulations.
2. Sidewalks are required to be installed along any new roads and shall be constructed in conformance with Article 12.2.j. Design Guidelines Sidewalks in the Berwick Subdivision Regulations.
3. All buildings and accessory structures shall be maintained in a safe, sanitary, nonhazardous manner. The condition of all buildings, structures, and components thereon shall be maintained so as to prevent and repair deterioration, so that the appearance thereof shall reflect a level of maintenance ensuring that the property itself may be preserved safely, and so that hazards to the public health and safety are avoided.
4. When three or more residential units are proposed; the applicants shall provide community and/or recreational opportunities for the residents. These community and/or recreational opportunities include but are not limited to common rooms, nature trails, and picnic areas.
5. The development shall always remain as elderly housing, and any change to the residential use shall require conformance with all district dimensional requirements as prescribed in Article 6.3 Dimensional Requirements

8.25 Medical Marijuana

8.25.1. Purpose: The purpose of this section of the ordinance is to ensure that all cultivation, processing, storage, and distribution of medical marijuana does not have an adverse impact on the health, safety, and general welfare of the residents of the Town of Berwick, ME, while still allowing for treatment and alleviation of a qualifying patient's debilitating medical condition or symptoms associated with the qualifying patient's debilitating medical condition.

8.25.2. Exemptions: As an accessory use, Medical Marijuana Home Production shall be allowed in any qualifying patient's residence or any medical marijuana caregiver's primary year-round residence in every base zone and overlay zone.

8.25.3. Location:

Medical Marijuana Production Facilities and Dispensaries cannot be within 1,000 feet of:

- Any school – as measured from the nearest property line of the land used for the school to the nearest portion of the proposed business's building, via straight line measurement.
- Drug or Alcohol Treatment Facilities – as measured from the nearest property line of the land used for the treatment facility to the nearest portion of the proposed business's building, via straight line measurement.
- Child Care Centers – as measured from the nearest property line of the land used for child care purposes to the nearest portion of the proposed business's building, via straight line measurement.
- Other Marijuana Production Facilities – as measured from the nearest portion of the existing or pending center or store's building to the nearest portion of the proposed business's building, via straight line measurement.

8.25.4. Odor Control

All Marijuana Production Facilities and Dispensaries must submit an odor control plan with the conditional use application.

A. Odor Control Plans shall consist of the following:

1. Specific Odor-emitting activity(ies) – This section should describe the odor emitting activities or processes (e.g., cultivation) that take place at the facility, the source(s) (e.g., budding plants) of those odors, and the location(s) from which they are emitted (e.g., flowering room)
2. Odor Mitigation Practices – For each odor-emitting source/process outlined in Section 1 of the odor control plan, specify the administrative and engineering controls the facility implements or will implement to control odors.
 - The best control technology for marijuana cultivation facilities is carbon filtration.

8.25.5. Security

A. All growing of medical marijuana within a commercial production facility shall occur inside and only within a completely enclosed structure. This does not apply to home

growing of medical marijuana.

B. Prior to granting approval, the Planning and/or Code Enforcement Department shall receive a written statement from the Berwick Chief of Police or designee that security measures are acceptable and also consistent with State requirements.

8.26 Automobile Service/Motorcycle Repair Business

A. Location Restrictions.

Within the R1 and R3 Zoning Districts Automobile Service/Motorcycle Repair Businesses are allowed only on major highways (Rt. 236, Rt. 9) and subdivisions approved for commercial use.

8.27 Wholesale Business

A. Location Restrictions.

Within the R1 and R3 Zoning Districts Wholesale Businesses are allowed only on major highways (Rt. 236, Rt. 9) and subdivisions approved for commercial use.

8.28 Commercial Mini-Storage

A. Location Restrictions.

Within the R3 Zoning Districts Commercial Mini-Storage are allowed only on major highways (Rt. 236, Rt. 9) and subdivisions approved for commercial use.

8.29 Retail Business

A. Location Restrictions.

Within the R3 Zoning Districts Retail Businesses are allowed only on major highways (Rt. 236, Rt. 9) and subdivisions approved for commercial use.

8.30 Vehicle Sales

A. Location Restrictions.

Within the R3 Zoning Districts Vehicle Sales are allowed only on major highways (Rt. 236, Rt. 9) and subdivisions approved for commercial use.

8.31 Congregate Housing

A. Location Restrictions.

Within the SC/I District Congregate Housing is allowed only on major highways (Rt. 236 and Rt. 9), or where public water and sewer services are available.

8.32 Clearing or removal of vegetation for activities other than timber harvesting

A. In the Resource Protection District, Clearing or removal of vegetation for activities other than timber harvesting requires a permit from the Code Enforcement Officer if more than 100 square feet of surface area, in total, is disturbed.

8.33 Outdoor Wood Furnace

A. Must comply with Maine Department of Environmental Protection Chapter 150.

8.34 Fringe Financial

A. Subject to all parking and landscaping requirements established in Article 6.4

8.35 Low Impact Industrial

A. All Low Impact Industrial shall conform to the following standards:

1. All manufacturing, processing, or fabrication shall occur within a building or fully enclosed structure.
2. Activities shall be limited to the processing or fabrication of materials which does not involve basic processes such as the mechanical or chemical transformation of materials or substances into new products unless such basic processes do not result in any noxious noise, odors, or vibrations that are perceptible at the property line of the parcel on which the use is located.
3. Assembly, processing, and fabrication activities not involving basic processes shall be conducted so that they will not result in objectionable noise, glare, vibration, odor, or electrical interference that will disturb or endanger adjacent properties.
4. No outside storage of raw materials, products, and wastes are permitted with Low Impact Industrial uses.
5. Truck loading and material handling areas shall be located to the side or rear of the building. No overhead doors or other service or material delivery facilities shall be allowed on the side of the building facing a public street unless the Planning Board determines that there is no practical alternative.

8.36 Drug Store

A. Location Restrictions. Within the R3 Zoning Districts Drug Stores are allowed only on major highways (Rt. 236, Rt. 9) and subdivisions approved for commercial use.

ARTICLE IX ADMINISTRATION, ENFORCEMENT, AND PENALTIES

9.1. Basic Requirements.

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 non-conforming use.

An application for a land use permit or site plan review approval must be denied for any property where a violation exists until such violation has been corrected or resolved.

Every application shall be accompanied by a fee for a land use permit. The fee schedule, as posted in town hall, is determined by the Board of Selectmen and reviewed annually. This application fee shall be paid to the Town of Berwick. No land use permit shall be issued until the fee is paid.

The following activities shall not require a use permit: repairs, replacement, and/or normal maintenance not requiring structural elements, decorative changes in existing structures or buildings, patios, fences, driveways (not to exceed lot coverage) and yard sales provided that the activity is in conformance with federal, state or local laws and does not involve any physical modifications or changes requiring a permit under this ordinance.

9.2 Permit Application.

A. Every applicant for a permit shall submit a written application on a form provided by the municipality which shall include:

1. Structures to be erected, structures to be moved, and exterior additions to existing structures:

- a. The shape, size and location of the lot for which application is made.
- b. The shape, size and location on the lot of the proposed structure, and of any proposed additions to existing structures.
- c. The shape, size and location of any other existing structures on the lot.
- d. The location of adjacent structures on adjacent lots, with reference to the distance from the lot line.

2. The above requirements shall not apply to alterations wholly within an existing structure.

3. All applications shall also include:

- a. The name and address of the property owner.
- b. The name, address and telephone number of the person, firm or firms involved in the construction on the property.
- c. The value of the proposed construction.
- d. A statement of the proposed use for any new or moved structure or altered portion of an existing structure.

e. Any other information the applicant wishes to furnish.

f. Any other information requested by the Code Enforcement Officer to make the application intelligible, and to determine whether the proposed construction will conform to this ordinance, other local ordinances and state law. 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.

g. A certification that the information in the application is complete and correct to the best of the applicant's knowledge and belief.

4. All applications shall be signed by the person or firm to do the work and by the owner of the property or other person authorizing the work.

5. All applications shall be dated, and the Code Enforcement Officer shall note upon each application the date and time of its receipt at his/her office.

B. Upon receipt of a permit application the Code Enforcement Officer shall:

1. Decide whether the information in the application is sufficient for him/her to determine whether, under the ordinance, the permit should be issued, or if the application is otherwise inadequate. If he/she feels the application is insufficient or inadequate, he/she shall at once notify the applicant in writing, indicating to him/her what information is necessary to correct the application. If the application is not so corrected, he/she shall deny it.

2. When an application conforms to the provisions of this ordinance and other codes and ordinances of the town, upon payment of the required fee, the Code Enforcement Office shall within ten days of its receipt issue the permit. He/she shall notify the Tax Assessor and keep a copy of the application/permit in a permanent file in his/her office.

3. If the application does not conform, the Code Enforcement Officer shall, within ten days, deny the permit in writing, stating therein his/her reasons for such denial. In the event the proposed building or structure is so constructed or is of such usage as to require a review of the application by other authorities or boards, as determined by reference to the land-use regulation file, the Code Enforcement Officer shall refer the applicant to the appropriate authority or board for review, approval or denial. Upon his/her receipt of the decision of the reviewing authority or board, in writing, and if such decision is an approval, the Code Enforcement Officer shall issue the permit with any conditions prescribed by the reviewing authority or board. The Code Enforcement Officer shall not issue any building permit if he/she has knowledge that a particular structure would be located in an unapproved subdivision, and/or if he/she has knowledge that the structure would be in violation of a particular state law or local ordinance. In denying any permit under these circumstances, the Code Enforcement Officer shall state in writing the reasons for the denial.

4. If he/she shall fail, for any reason, within ten days either to issue a permit or deny an application in writing, such failure shall be deemed a denial so that the applicant may appeal to the Board of Appeals if he/she so wishes.

C. Following the issuance of a land use permit if no substantial start is made on the construction within one year and completed within five years of the date of the permit, it shall lapse and become void. Thereafter no further work on such construction can be made until a new permit has been issued.

C. Any permit issued which is not in conformity with the provisions of this ordinance confers no rights and is void.

9.3 Foundation Certification.

For construction of a principal or accessory building, or an addition to an existing building, the application for a building permit must include a plot plan showing the location of proposed and existing structures to assure that setback requirements are satisfied. A foundation certification may be required from the applicant or contractor when the footing is inspected if any part of the proposed structure is to be located closer than five feet to the minimum front, side or rear yard setbacks required by the applicable zoning district regulations, or at the discretion of the Code Enforcement Officer.

9.4 Certificate of Occupancy Required.

A. A Certificate of Occupancy issued by the Code Enforcement Officer is required in advance of the use or occupancy of:

1. Any lot, or change of use, thereof.
2. A structure hereafter erected or a change in the use of an existing structure.

B. No Certificate of Occupancy shall be issued unless the lot or building or structure complies with all provisions of this ordinance. A record of all certificates of occupancy shall be kept on file in the office of the Code Enforcement Officer, and a copy shall be furnished, on request, to any person having a proprietary or tenancy interest in the structure or land involved. A duplicate copy shall be filed in the office of the Tax Assessor and the certificate of occupancy shall state specifically the uses which it permits.

9.5 Enforcement Officer.

A. 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/she shall notify, in writing, the person responsible for such violations, indicating the nature of the violations and ordering the action necessary to correct it. He/she shall order the removal of illegal buildings, structures, additions or work being done, or shall take any other action as authorized by this ordinance to insure compliance with, or to prevent violation of, its provisions.

B. The Code Enforcement Officer should maintain a current file of all pertinent federal, state and local statutes, ordinances, regulations, codes, and plans relating to land use regulation including local subdivision plans.

C. The Code Enforcement Officer shall conduct on-site inspections to insure compliance with all applicable laws and conditions attached to approval. The Code Enforcement Officer may enter any property at reasonable hours and enter any structure with the consent of the property owner, occupant or agent, to inspect the property or structure for compliance with the laws or ordinances set forth in this section. If consent is denied he/she should obtain an administrative warrant before entering the property. The Code Enforcement Officer may revoke a permit if it was issued in error or if based on erroneous information.

9.6 Legal Action and Violations.

When any violation of any provision of this ordinance shall be found to exist, the Code Enforcement Officer is hereby authorized and directed to institute any and all actions and proceedings, either legal or equitable, that may be appropriate or necessary to enforce the provisions of this ordinance in the name of the town.

9.7 Fines.

Any person, firm or corporation being the owner or having control or use of any structure or premises who violates any of the provisions of this ordinance shall upon conviction be fined not less than \$100 nor more than \$2,500 for each violation. Each day such a violation is permitted to exist after notification shall constitute a separate offense. Fines shall be payable to the town.

9.8 Conditional Use Permits and Site Plan Review.

A person informed by the Code Enforcement Officer that he/she requires a conditional use permit or site plan review shall file an application for the permit with the Planning Board on forms provided for the purpose. A fee shall be paid at the time of filing an application to cover administrative costs. This fee shall be determined by the Board of Selectmen and reviewed annually. In addition, prior to receiving approval of any application, the applicant shall pay to the town all of its reasonable costs associated with legal advertisements and other out of pocket expenses applicable to the application. Out of pocket expenses are all expenses or costs for legal advice and technical consultation or advice that the Planning Board deems necessary to process the application. If fees are required per Article 7.22.D of the Land Use Ordinance, those fees shall be paid to the Town before the beginning of any construction activity. These services will be identified, budgets established, and the amount paid in advance of the service being performed. The fee for services payable by the applicant to the municipality will be deposited into a special account designed for that application. Plans for conditional uses and site plan review presented for approval under this section shall conform to the following submission requirements unless the Planning Board waives these requirements.

A. Authorization.

The Planning Board is hereby authorized to hear and decide upon applications for conditional use permits, in accordance with federal and state law, the provisions of this ordinance, and the provisions of other applicable town ordinances. The Board shall approve, approve with modifications or conditions, or disapprove an application for a conditional use permit. No conditional use or site plan review approval shall be authorized unless specific provisions for such conditional use is made in this ordinance.

B. Pre-existing uses or structures which would otherwise require conditional use or site plan review.

A use which now requires conditional use or site plan review but which existed prior to the effective date of this ordinance or any amendments thereto, may not be changed to another conditional use or use requiring site plan review, nor substantially expanded or altered except in conformity with all regulations of this ordinance pertaining to conditional uses.

C. Substantial Expansion.

Substantial expansion shall be defined as:

1. Floor space increase of 500 square feet or 25 percent of the existing floor space, whichever is less; or
2. New materials, processes or production, or services and/or sales not normally associated with the existing use.
3. An increase of 2,500 square feet or more of the amount of impervious surface (parking, walks, etc.).

D. Changes or Modifications to Approved Use.

No changes or modifications shall be made in any approved conditional use or site plan approval without approval of the change by the Planning Board.

E. Site Plan Review.

A conditional use which meets the criteria specified below shall require site plan review approval in accordance with this section.

1. The construction or addition of 3,000 or more square feet of gross non-residential floor area.
2. The installation of or expansion of 5,000 or more square feet of impervious surfaces.
3. The establishment or expansion of a mobile home park.
4. Projects involving extraction industries.
5. Multi-family dwelling units.

F. Application Procedure.

1. Application for Conditional Use Review. Plans for conditional use review need not be drawn to scale, but should be legible and adequate for presentation purposes. The conditional use review application shall include as a minimum:

a. Name and address of the applicant or his/her authorized agent and name of proposed development in which the applicant has title or interest; a deed for the property;

b. Municipal tax maps and lot numbers and names and addresses of abutting landowners;

c. Total floor area, ground coverage and location of each proposed building; setbacks to property lines;

d. Approximate boundaries of the parcel;

e. If on-site sewage disposal is proposed, then an on-site soils investigation report by a licensed site evaluator shall be provided;

f. 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;

g. Existing and proposed entrances/exits from the property;

h. A parking plan shall also be provided;

i. Any existing restrictions or easements on the site;

j. A brief written narrative shall be provided on what type of business is proposed, hours of operation, number of employees, materials being used, waste disposal, etc.

The Planning Board may also require information outlined in the section below upon a determination that such information is needed to better review an application.

2. Application for Site Plan Review.

In addition to the information required above for conditional use review, an applicant for site plan review must also submit the following information. The site plan review application shall include as a minimum:

a. All information required in Section 9.8.F.1 a-j, for conditional uses, plus the following:

b. A map or maps prepared at a scale of not less than one inch to 40 feet and shall include:

i. Perimeter survey of the parcel made and certified by a registered land surveyor depicting reference points, showing true north point, graphic scale, corners of the parcel and date of survey and total acreage. The perimeter survey shall be recorded at the York County Registry of Deeds after Planning Board approval but prior to the issuance of the land use permit. Areas within 200 feet of the proposed development site shall be included;

ii. Existing and proposed locations and dimensions of any utility lines, sewer lines, water lines, easements, drainage ways, public or private rights of way;

iii. Location, ground floor area and elevations of buildings and other structures on the site.

iv. 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, and proposed location and design of the best practical subsurface disposal system for the site, all of which must meet the standards set forth in the Maine State Plumbing Code;

v. 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;

vi. Landscape plan showing location, type and approximate size of plantings and location and dimensions of all fencing and screening.

vii. Topography indicating contours at intervals of not more than two feet in elevation unless otherwise specified by the Planning Board.

c. A written statement by the applicant that shall consist of:

i. A description of the proposed uses to be located on the site, including quantity and type of building construction if any;

ii. Total floor area and ground coverage of each proposed building and structure and percentage of lot covered by each building or structure;

iii. Method of solid waste disposal;

iv. Erosion and sedimentation control plan prepared in accordance with Article 7.14 if required;

v. Copies of letters to the town manager, selectmen, Planning Board, road commissioner/public works director, fire chief, police chief, etc. notifying them of the proposed development;

vi. Stormwater management plan prepared in accordance with Article 7.16 if required;

vii. Statement of financial capacity which should include the names and sources of the financing parties including banks, government agencies, private corporations, partnerships and limited partnerships and whether these sources of financing are for construction loans or long-term mortgages or both;

viii. The applicant's evaluation of the availability and suitability of off-site public facilities including sewer, water, and streets;

ix. A statement from the fire chief as to the availability of fire hydrants and/or fire ponds, or provisions of fire protection services;

x. If public streets are proposed, a statement from the town engineer that the proposed road or street construction will meet town specifications;

xi. An estimate of the date when construction will start and when the development will be completed.

G. Public Hearing

Following the filing of a complete application as determined by the Planning Board a public hearing shall be held on the application within 30 days. The Board shall notify the Code Enforcement Officer and the municipal officers at least seven days in advance, of the time and place of the hearing, and shall publish notice of the hearing at least seven days in advance in a newspaper of general circulation in the area.

1. The Board shall notify by regular U.S. mail, first class, postage prepaid, the applicant and the owners of all property within 200 feet of the property involved at least seven days in advance of the hearing of the nature of the application and of the time and place of the public hearing.

2. The owners of property shall be considered to be those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action by the Planning Board.

3. The Code Enforcement Officer or his/her designated assistant shall attend all hearings and may present to the Planning Board all plans, photographs or other material he/she deems appropriate for an understanding of the application.

4. The applicant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the chair. All persons at the hearing shall abide by the order of the chairman.

H. Decision.

1. Within 30 days of the public hearing the Planning Board shall reach a decision on a conditional use or site plan review and shall inform in writing, the applicant, the Code Enforcement Officer and municipal officers of its decision, and shall prepare a detailed finding of facts and conclusions within 14 days of its decision. Upon notification of the decision of the Planning Board, the Code Enforcement Officer, as instructed, shall immediately issue, with conditions prescribed by the Board, or deny a building permit.

2. A conditional use permit or site plan approval secured under the provisions of this ordinance by vote of the Planning Board shall expire if the use involved is not commenced within one year of the date on which the conditional use or site plan is authorized.

3. An appeal may be taken within 30 days after a decision is rendered to Superior Court.

I. Performance Standards for Conditional Use and Site Plan Review.

1. The following standards are to be used by the Planning Board in judging applications for site plan review and conditional use applications and shall serve as minimum requirements for approval of the application. The site plan shall be approved, unless in the judgment of the Planning Board the applicant is not able to reasonably meet any of these standards. In all circumstances the burden for proof shall be on the applicant and such burden of proof shall include the production of evidence necessary for the Planning Board to review the application.

a. Conformance with Comprehensive Plan: All proposed conditional uses and site plans shall conform to the Comprehensive Plan of the Town of Berwick and with the provisions of all pertinent federal, state, and local codes, ordinances, and regulations.

b. Preserve and enhance 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 complete, landscape shall be designed and planted that will define, soften or screen the appearance of off street parking areas from the 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 the neighboring land uses.

c. Relationship of the proposed buildings to the environment: Proposed structures shall be related harmoniously to the terrain and to the existing buildings in the vicinity which have a 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 such as slope, soil type and drainage ways.

d. Vehicular access: The proposed site layout shall provide for safe access and egress from public and private roads by providing adequate location, numbers and controls of access points including site distances, turning lanes, traffic signalization when required by existing and projected traffic flow on municipal road systems.

e. Parking and circulation: The layout and design of all 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 arrangements and use of parking areas.

f. Surface water drainage: Adequate provision shall be made for surface drainage so that removal of surface waters will not adversely affect neighboring properties, downstream conditions, soil erosion or the public storm drainage system. Whenever possible, on-site absorption of unpolluted run-off waters shall be utilized to permit groundwater recharge on the site.

g. Existing utilities: The development shall not impose an unreasonable burden on sewers, sanitary and storm drains, water lines or other public utilities.

h. 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 proposed buildings and structures and the surrounding properties.

i. Special features of the development: Exposed storage areas, exposed machinery installation, service areas, truck loading areas, utility buildings and similar structures shall have sufficient setback and screening to provide an audio/visual buffer to minimize their adverse impact on other land uses within the development area and surrounding properties.

j. Exterior lighting: All exterior lighting shall be designed to minimize adverse impact on neighboring properties.

k. Emergency vehicle access: Provisions shall be made for providing and maintaining convenient and safe emergency vehicle access to all buildings and structures.

l. 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, sewer treatment plant, school, open spaces, recreational programs and facilities, and other municipal service and facilities.

m. Will not result in water or air pollution: In making this determination, it shall at a minimum consider: The elevation of the land above sea level and its relationship to the flood plains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its attest on effluents; and the applicable state and local health and water resources regulations.

n. Has sufficient water available for the reasonable foreseeable needs of the development (this is usually considered to be ten years approximately).

o. Will provide for adequate sewerage waste disposal.

p. Will not have adverse affects on the scenic or natural beauty of the area, aesthetics, or rare and irreplaceable natural areas.

q. The developer has adequate financial and technical capacity to meet the above stated standards.

r. Whenever situated in whole or in part within 250 feet of any pond, lake or river, will not adversely affect the quality of such body of water or affect the shoreline of such body of water, based on the standards outlined in Section 9.8.I.1.j.

s. Low Impact Design: Each applicant is required to submit a statement to the Planning Board documenting proposed Low Impact Design (LID) for the site, which will help to reduce storm water volumes and help to enhance storm water quality. LID includes, but is not limited to green roofs, rain gardens, tree wells, infiltration basins, and permeable pavement.

J. Additional Requirements Attached to Conditional Uses and Site Plan Review

Upon consideration of the factors listed above, the Planning Board may attach such conditions in addition to those required in this ordinance that it finds necessary to further the purposes of this ordinance. Violation of any of these conditions shall be violation of this ordinance. Such conditions may include, but are not limited to, specifications for: type of vegetation; increased setbacks and yards; specified sewage disposal and water supply facilities; landscaping and planting screens; period of operation; operational control; professional inspection and maintenance; sureties; deed restrictions; restrictive covenants; locations of piers, docks, parking and signs; type of construction; or any other conditions necessary to fulfill the purposes of this ordinance.

In evaluating each application the Board may request the assistance of the County Soil and Water Conservation District, state or federal agency, or consultant which can provide technical assistance.

K. Performance Guarantees

1. Types of Guarantees. At the time of approval of the application for conditional use or site plan approval, the Planning Board may require the applicant to 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 municipality or a savings account or certificate of deposit naming the municipality as owner, for the establishment of an escrow account;

b. A performance bond payable to the municipality issued by a surety company, approved by the municipal officers or town manager;

c. An irrevocable letter of credit from a financial institution establishing funding for the construction of the subdivision, from which the municipality may draw if construction is inadequate, approved by the municipal officers, or town manager; or

The conditions and amount of the performance guarantee shall be determined by the Board with the advice of the municipal engineer, road commissioner, municipal officers, and/or municipal 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 applicant will be in default and the municipality shall have access to the funds to finish construction.

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 applicant, 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 applicant 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 applicant 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 applicant, and the procedures for collection by the municipality. The bond documents shall specifically reference the project 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 construction of the project and may not be used for any other project or loan.

6. 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 municipal engineer or other qualified individual retained by the municipality and any other agencies and departments who may be involved, that the proposed improvements meet or exceed the design and construction requirements for that portion or phase of the project for which the release is requested.

7. Default. If upon inspection, the municipal engineer or other qualified individual retained by the municipality 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 or she shall so report in writing to the Code Enforcement Officer, the municipal officers, the Planning Board, and the applicant or builder. The municipal officers shall take any steps necessary to preserve the municipality's rights.

8. Improvements Guaranteed. Performance guarantees, when required, shall be tendered for all improvements required under this ordinance, including but not limited to, sidewalks,

drainage and storm water management facilities, parking areas, lighting, signs, landscaping and buffer areas, public sewage collection or disposal facilities, public water systems, and erosion and sedimentation control measures.

ARTICLE X BOARD OF APPEALS

10.1 Establishment and Organization.

A Board of Appeals is hereby established which shall consist of five members and two associate members. The term of office of a member or associate is three years serving staggered terms. A municipal officer or his/her spouse may not be a member or associate member of the Board of Appeals. When a regular member of the Board is unable to act because of interest, physical incapacity or absence, an associate member shall act in his/her stead. Members of the Board of Appeals shall be appointed by the municipal officers. When there is a permanent vacancy, the municipal officers shall appoint a new member to serve for the remainder of the unexpired term. Members of the Board of Appeals may be removed from office by the municipal officers for cause upon written charges and after public hearing. The Board of Appeals shall elect a chairman and secretary from its own membership.

10.2 Proceedings of the Board of Appeals.

The Board of Appeals shall adopt rules necessary to the conduct of its affairs, in keeping with the provisions of this ordinance and 30-A M.R.S.A., Section 2691. Meetings shall be held at the call of the chairman and at such other times as the Board may determine. The chairman, or in his/her absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public. The Board of Appeals shall keep the minutes of its proceedings, showing the vote of each member upon each question, or of absence or failure to vote, and shall keep records of its examinations and other official actions, all of which shall be public record and be filed in the town offices. A quorum shall consist of three members.

10.3 Powers and Duties of the Board of Appeals.

The Board of Appeals shall have the following powers:

- A. Administrative review. To hear and decide appeals where it is alleged there is a land use violation or error in any order, requirement, decision, or determination made by the Code Enforcement Officer in the enforcement of this ordinance.
- B. Variances. To authorize variances upon appeal in specific cases, but only within the limitations set forth in this ordinance
- C. Interpretations of the ordinance.

10.4 Variances.

Variances may be permitted only under the following conditions:

- A. Unless otherwise provided in this ordinance, variances are obtainable only for height, minimum lot size, minimum lot width, structure size, setbacks and open space requirements.
- B. Variances cannot, under any circumstances, be obtainable for establishment of any uses otherwise prohibited.
- C. The Board of Appeals shall not grant a variance unless it finds that all the following criteria are met:
 - 1. That the land in question cannot yield a reasonable return unless a variance is granted;
 - 2. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

3. That the granting of a variance will not alter the essential character of the locality; and

4. That the hardship is not the result of action taken by the applicant or a prior owner. Such hardship may be found by the Board of Appeals where the Town of Berwick Land Use Ordinance, as applied to the applicant's property, substantially destroys or decreases the value of the property in question for any permitted use to which the land or property can reasonably be put. Mere inconvenience to the property owner shall not satisfy this requirement. Neither financial hardship alone nor pleading that a greater profit may be realized from the applicant's property were a variance granted shall be sufficient evidence of unnecessary hardship.

D. The Board shall limit any variances granted as strictly as possible in order to preserve the terms of the ordinance as much as possible, and it may impose such conditions to a variance as it deems necessary, to this end.

E. Disability Variance. The Board may grant a variance to a property owner for the purpose of making that property accessible to a person with a disability who is living on the property. 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 property 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 on the property. For the purposes of this section, a disability has the same meaning as a physical or mental handicap under 5 M.R.S.A., Section 4553 and the term "structures necessary for access to or egress from the property" is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

F. Setback Variance for Single-Family Dwellings. An ordinance adopted under this subsection may permit a variance from a set-back requirement only when strict application of the zoning ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this subsection means:

1. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.
2. The granting of a variance will not alter the essential character of the locality;
3. The hardship is not the result of action taken by the applicant or a prior owner;
4. The granting of the variance will not substantially reduce or impair the use of the abutting property; and
5. That the granting of the variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

10.5 Appeals to the Board of Appeals.

A. Making an Appeal

1. An appeal may be taken to the Board of Appeals by an aggrieved person from any decision of the Code Enforcement Officer. Such appeal shall be taken within 30 days of the decision appealed from.

2. Such appeal shall be made by filing with the Board of Appeals a written notice of appeal, specifying the grounds for such appeal. For a variance appeal the applicant shall submit:

a. A sketch drawn to scale showing lot lines, location of existing building and other physical features pertinent to the variance request.

b. A concise written statement stating what variance is requested.

3. Upon being notified of an appeal, the Code Enforcement Officer shall transmit to the Board all the papers specifying the record of the decision appealed from. Each appeal shall be accompanied by a fee as stated in the Cost Recovery Fee Schedule to cover advertising and administrative costs. The Board of Appeals shall hold a public hearing on the appeal within 45 days.

B. Procedures on Appeal

1. At least seven days prior to the date of the hearing on such appeal, the Board shall cause to be published in one issue in a newspaper of general circulation in the town a notice which includes:

- a. the name of the person appealing;
- b. a brief description of the property involved;
- c. a brief description of the decision appealed from, or the nature of a variance appeal.;
- d. the time and place of the Board's hearing.

2. At least seven days prior to the date set for hearing, the Board shall also cause the Town Clerk to give similar written notice to:

- a. all property owners of record whose properties lie within 200 feet of the affected property;
- b. the person making the appeal, and
- c. the Planning Board and any other parties of record.

C. Hearings

1. The Board may receive any oral or documentary evidence but shall provide as a matter of policy for the exclusion of irrelevant, immaterial or unduly repetitious evidence. Every party shall have the right to present his/her case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examinations as may be required for a full and true disclosure of the facts.

2. The appellant's case shall be heard first. To maintain orderly procedure each side shall proceed without interruption. Questions may be asked through the chair. All persons at the hearing shall abide by the order of the chairman.

3. At any hearing, a party may be represented by agent or attorney. Hearings shall not be continued to other times except for good cause.

4. The Code Enforcement Officer or his designated assistant shall attend all hearings and may present to the Board of Appeals all plans, photographs, or other material he/she deems appropriate for an understanding of the appeal.

5. The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceedings, shall constitute the record.

10.6 Decisions of the Board of Appeals.

A. The concurring vote of a majority of the members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the Code Enforcement Officer, or to decide in favor of the applicant on any matter on which it is required to pass under this ordinance, or to affect any variation in the application of this ordinance.

B. The Board shall decide all appeals within 30 days after hearing, and shall issue a written decision on all appeals.

C. All decisions shall become a part of the record and shall include a statement of findings and conclusions as well as the reasons or basis therefore, upon all the material issues of fact, law or discretion presented, and the appropriate order, relief or denial thereof. Notice of any decision shall be mailed or hand delivered to the petitioner, his/her representative or agent, the Planning Board, agency or office and the municipal officers within seven days of the decision date.

D. Upon notification of the granting of an appeal by the Board of Appeals, the Code Enforcement Officer shall immediately issue a permit in accordance with the conditions of the approval, unless the applicant needs a conditional use permit.

E. Appeals may be taken as permitted by law from any decision of the Board of Appeals to Superior Court.

F. A copy of all variances granted by the Board of Appeals in the shoreland area shall be submitted to the Department of Environmental Protection within 14 days of the decision.

10.7 Stay of Proceedings.

An appeal stays all legal proceedings in a furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board after the notice of appeal has been filed with him, that by reason of facts stated in the certificate a stay would, in his/her opinion, cause imminent peril to life and property. In such case proceedings shall not be stayed otherwise than by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

ARTICLE XI PLANNING BOARD

11.1 Establishment.

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

11.2 Appointment.

A. Planning Board members shall be appointed by the Board of Selectmen and sworn by the clerk or other person authorized to administer oaths.

B. The Planning Board shall consist of five members and two alternate members.

C. The term of each member shall be three years. Upon adoption of this section, the Board of Selectmen shall reappoint the sitting members for three year terms in the following manner: one member to serve until 12/31/99; two members to serve until 12/31/00; and two members to serve until 12/31/01. After the transition period, appointments shall be made for full three year terms. The term of office of an alternate member shall be one year except for the transition term which shall be until 12/31/99. Thereafter the alternate members shall be appointed annually. This transition shall be effective July 1, 1999.

D. When there is a permanent vacancy, the municipal officers shall appoint a person to serve for the unexpired term. A vacancy shall occur upon the resignation, removal, or death of any member, or when a member ceases to be a legal resident of the town. When a vacancy occurs, the chairperson of the Planning Board shall immediately so advise the Board of Selectmen in writing. The Board of Selectmen may remove members of the Planning Board for cause after notice and hearing. Lack of regular attendance may constitute cause for removal.

E. A Board of Selectmen or his/her spouse may not be a member or alternate member.

11.3 Organization and Rules.

A. The Planning Board shall elect a chairperson and vice chairperson from among its members. The Planning Board may either elect a secretary from among its members or hire a non-board member to serve as secretary. 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 alternate member to sit in that member's stead.

C. An alternate member may attend all meetings of the Planning 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 Planning Board each month.

F. No meeting of the Planning Board shall be held without a quorum consisting of three members or alternate members authorized to vote. The Planning Board shall act by majority vote, calculated on the basis of the number of members present and voting.

G. The Planning Board may establish and shall annually review Policies and Procedures (by-laws) setting forth procedural rules, regulations and guidelines governing the conduct of the Planning Board, its members, employees and other interested parties who regularly appear

before the Planning Board. These Policies and Procedures may be amended from time to time throughout the year and may include such rules and regulations as the Planning Board deems necessary to clarify its duties set forth in this ordinance.

11.4 Duties and Powers.

A. The Planning Board shall perform such duties and exercise such powers as are provided by this Land Use Ordinance, the Subdivision Regulations for the Town of Berwick, Maine, and the laws of the State of Maine.

B. The Planning Board is responsible for periodic updates to the Comprehensive Plan as mandated by 30-A M.R.S.A. Chapter 187, Subchapter II, for consideration at public hearings and decision by the voters.

C. The Planning Board is responsible for initiating and directing the long range planning of the town following the guidelines of the Comprehensive Plan and to protect and retain the integrity of the character, natural beauty and historic architecture of the town.

D. The Planning Board may propose revisions and updates to the Land Use Ordinance, the zoning map, the Flood Plain Management Ordinance and such other ordinances dealing with planning and land use as may be considered by the town in the future, subject to consideration at public hearings and decision by the legislative body as provided for by Article 12. The Planning Board may write, revise and update the Subdivision Regulations for the Town of Berwick, Maine.

E. The Planning Board may provide assistance and recommendations to any municipal department on matters affecting the Comprehensive Plan. Each officer and department of the town shall give all reasonable aid, cooperation and information to the Planning Board.

F. The Planning Board may obtain goods and services necessary to its proper function within the limits of appropriations made for the purpose and within the limits of the town's purchasing policies.

ARTICLE XII

AMENDMENTS

12.1 Initiation.

A proposal for an amendment to this ordinance may be initiated by:

1. The Planning Board, by majority vote of the Board;
2. The municipal officers, through a request to the Planning Board;
3. An individual, through a request to the Planning Board; or
4. A written petition of a number of voters equal to at least ten percent of the voters in the last gubernatorial election.

12.2 Procedure.

A. Any proposal for an amendment shall be made to the Planning Board in writing stating the specific changes requested. When a change in zoning boundaries is proposed, the application shall state the nature, extent, and location of the boundary change proposal, and shall be accompanied by a scale drawing showing the areas to be changed, with dimensions. When an amendment is proposed by other than the municipal officers or the Planning Board, a fee of \$250.00 shall accompany the proposal to cover the costs of hearings and advertisements.

B. Within 30 days of receiving an amendment the Planning Board shall hold a public hearing on the proposed amendment (See 30-A M.R.S.A., Section 4352, Subsection 9 for notice requirements), and unless the amendment has been submitted by the municipal officers or by a petition, the Board shall vote whether to forward the amendment to the municipal officers. If the Board votes to forward the amendment to the municipal officers, it shall make a written recommendation regarding passage to the municipal officers and legislative body prior to any action on the amendment by the municipal officers.

C. The municipal officers shall hold a public hearing on the proposed amendment. Notice of the hearing shall be posted and advertised in a newspaper of general circulation in the municipality at least seven days prior to the hearing. The notice shall contain the time, date, and place of hearing, and sufficient detail about the proposed changes as to give adequate notice of their content. If the proposed changes are extensive, a brief summary of the changes, together with an indication that a full text is available at the Town Clerk's office shall be adequate notice.

D. Except for amendments affecting the Shoreland Zone, amendments shall take effect and be in force from the date of their adoption. Amendments affecting the Shoreland Zone shall not be effective unless approved by the Department of Environmental Protection. A certified copy of the amendment, attested and signed by the Town Clerk, shall be forwarded to the Department for approval. If the Department fails to act on this ordinance within 45 days of its receipt of the amendment it shall be deemed approved. Any application for a permit submitted to the municipality within the 45-day period shall be governed by the terms of the amendment if the amendment is approved by the Department of Environmental Protection.

12.3 Adoption.

Any amendment to this ordinance shall be adopted by the legislative body.

ARTICLE XIII

LEGAL STATUS PROVISIONS

13.1 Conflict with Other Laws.

When the provisions of this ordinance specify more restrictive standards than required by any other statute or ordinance the requirements of this ordinance shall govern.

13.2 Separability.

Should any section or part of a section or any provision of this ordinance be declared by the courts to be unconstitutional or invalid, such declaration shall not affect the validity of the ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

13.3 Effective Date.

This ordinance will be effective July 1, 2000 and replaces the Town of Berwick Land Use Ordinance first adopted March 8, 1986 and amended March 1987, March 1988, June 1991, and November 1992. It was readopted June 8, 1993 to conform to the Comprehensive Plan and amended June 1994, June 1996, November 1996, June 1997, May 1998, November 1998, May 18, 1999 and May 2000.

ARTICLE XIV

SHORELAND ZONING

14.1 Purposes. The purposes of this Article 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 commercial fishing and maritime industries; to protect freshwater 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.

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

14.3 Applicability. This Article 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 Article 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.

14.4 Effective Date

- A. Effective Date of this Article and Article Amendments. This Article, which was adopted by the municipal legislative body on May 12, 2009, shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. A certified copy of the Article, or Article Amendment, attested and signed by the Municipal Clerk, shall be forwarded to the Commissioner for approval. If the Commissioner fails to act on this Article or Article Amendment, within forty-five (45) days of his/her receipt of the Article, or Article Amendment, it shall be automatically approved. For the purposes of Section 14.12, the effective date of this Article XIV is the original effective date of this ordinance as put forth in Section 13.3.

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

- B. Section 14.15(P) is repealed on the statutory date established under 38 M.R.S.A. section 438-B(5).

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 2nd 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.”

14.5 Availability. A certified copy of this Article shall be filed with the Municipal 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 Article shall be posted.

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

14.7 Conflicts with Other Ordinances. Whenever a provision of this Article 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.

14.8 Amendments. This Article may be amended by majority vote of the legislative body. Copies of amendments, attested and signed by the Municipal Clerk, shall be submitted to the Commissioner of the Department of Environmental Protection following adoption by the municipal legislative body 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 his/her 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.

14.9 Districts and Zoning Map

A. Official Shoreland Zoning Map. The areas to which this Article is applicable are hereby divided into the following districts as shown on the Official Shoreland Zoning Map(s) which is (are) made a part of this Article:

- (1) Resource Protection
- (2) Limited Residential
- (3) Shoreland Commercial Industrial
- (4) Stream Protection

B. Scale of Map. The Official Shoreland Zoning Map shall be drawn at a scale of not less than: 1 inch = 2000 feet. District boundaries shall be clearly delineated and a legend indicating the symbols for each district shall be placed on the map.

NOTE: Because of map scale or other reason, a municipality may have a series of maps depicting its shoreland zone.

C. Certification of Official Shoreland Zoning Map. The Official Shoreland Zoning Map shall be certified by the attested signature of the Municipal Clerk and shall be located in the municipal office.

D. Changes to the Official Shoreland Zoning Map. If amendments, in accordance with Section 4.8, 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.

14.10 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. Where uncertainty exists as to the exact location of district boundary lines, the Board of Appeals shall be the final authority as to location.

NOTE: Municipalities are encouraged to incorporate specific written descriptions of district boundaries into the Article so that disputes over district boundaries are minimized. The Maine Supreme Judicial Court has held that the Official Shoreland Zoning Map is the primary tool to which to refer in determining district boundaries under ordinances that are not more explicit in their district descriptions than the language of the Guidelines, and that where there is inconsistency between the Map and these general text descriptions of the shoreland districts as provided in the minimum guidelines, the Map prevails.

14.11 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.

14.12 Non-conformance.

A. Purpose. It is the intent of this Article to promote land use conformities, except that non-conforming conditions that existed before the effective date of this Article or amendments thereto shall be allowed to continue, subject to the requirements set forth in Article 12. Except as otherwise provided in this Article, 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 Article.
- (2) Repair and Maintenance. This Article 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.

Diagram B. EXPANSION OPTION

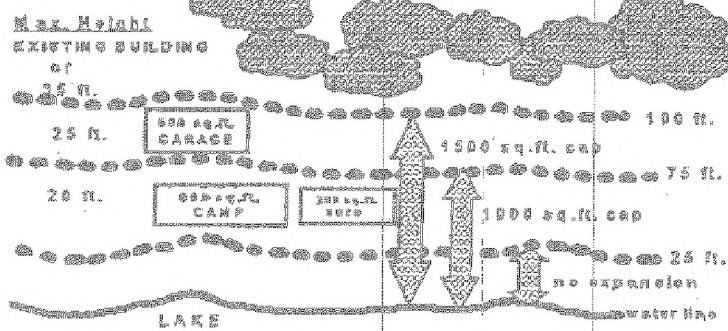
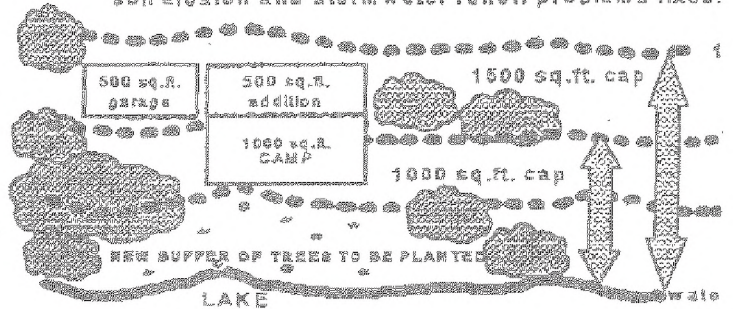


Diagram C. SPECIAL EXPANSION ALLOWANCE

Up to 500 sq.ft. above cap allowed provided:
Camp greater than 50 ft. from shore,
Buffer planted and maintained within 50 ft. and,
soil erosion and storm water runoff problems fixed.



(a) Legally existing non-conforming principal and accessory structures that do not meet the water body, tributary stream, or wetland setback requirements may be expanded or altered as follows, as long as all other applicable standards contained in this Ordinance are met.

- i. Expansion of any portion of a structure within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or wetland setback requirement.
- ii. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body or wetland setback requirement.
- iii. For structures located less than 75 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, the maximum combined total floor area for all portions of those structures within that 75-foot distance is 1,000 square feet, and the maximum height of any portion of a structure that is within 75 feet, horizontal distance, of a water body, tributary stream or upland edge of a wetland is 20 feet or the height of the existing structure, whichever is greater.
- iv. For structures located less than 100 feet, horizontal distance, from the normal high-water line of a great pond classified as GPA or a river flowing to a great pond classified as GPA, the maximum combined total floor area for all portions of those structures within that 100-foot distance is 1,500 square feet, and the maximum height of any portion of a structure that is within 100 feet, horizontal distance, of a great pond is 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet, horizontal distance from the normal high-water line of a water body, tributary stream, or the upland edge of a wetland must meet the floor area and height limits of division (iii).

For the purposes of Section 14.12(C)(1)(a), a basement is not counted toward floor area.

- (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 or its designee, basing its decision on the criteria specified in Section 14.12(C)(2) Relocation, below. If the completed foundation does not extend beyond the exterior dimensions of the structure 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, it shall not be considered to be an expansion of the structure.

NOTE: The special expansion allowance provided below is available to municipalities that wish to allow a greater expansion limit if the landowner has maintained a quality 50 foot buffer along the water body, tributary stream or wetland, or agrees to plant such a buffer, and agrees to implement certain measures to reduce erosion and sedimentation from the property. If the municipality does not have adequate resources to ensure compliance with this provision, the department recommends that it not be incorporated into the ordinance.

(1-A) Special expansion allowance. Existing principal and accessory structures that exceed the floor area or height limits set in Section 14.12(C)(1)(a)(iii) and 14.12(C)(1)(a)(iv) above, may not be expanded, except that the limits may be exceeded by not more than 500 square feet provided that all of the following requirements are met.

- (a) The principal structure is set back at least 50 feet, horizontal distance, from the normal high-water line of a water body, tributary stream or upland edge of a wetland.
- (b) A well-distributed stand of trees and other natural vegetation as defined in Section 14.15(Q)(2)(b), extends at least 50 feet, horizontal distance, in depth as measured from the normal high-water line or upland edge for the entire width of the property.

If a well-distributed stand of trees and other vegetation meeting the requirements of Section 14.15(Q)(2)(b) is not present, the 500 square foot special expansion allowance may be permitted only in conjunction with a written plan, including a scaled site drawing, by the property owner, and approved by the Planning Board or its designee, to reestablish a buffer of trees, shrubs, and other ground cover within 50 feet, horizontal distance, of the shoreline or tributary stream.

- (c) Adjacent to great ponds classified GPA and rivers flowing to great ponds classified GPA, except for the allowable footpath, there exists complete natural ground cover, consisting of forest duff, shrubs and other woody and herbaceous vegetation within 50 feet, horizontal distance, of the normal high-water line. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch and plantings of native shrubs, and other woody and herbaceous vegetation in quantities sufficient to retard erosion and provide for effective infiltration of stormwater.

(d)A written plan by the property owner, including a scaled site drawing, is approved by the Planning Board and is developed, implemented, and maintained to address the following mitigation measures for the property within the shoreland zone.

(i)Unstabilized areas resulting in soil erosion must be mulched, seeded, or otherwise stabilized and maintained to prevent further erosion and sedimentation to water bodies, tributary streams, and wetlands.

(ii)Roofs and associated drainage systems, driveways, parking areas, and other nonvegetated surfaces must be designed or modified, as necessary, to prevent concentrated flow of storm water runoff from reaching a water body, tributary stream or wetland, Where possible, runoff must be directed through a vegetated area or infiltrated into the soil through the use of a dry well, stone apron, or similar device.

(1-B) Planting requirements. Any planting or revegetation required as a condition to the Special Expansion Allowance must be in accordance with a written plan drafted by a qualified professional, be implemented at the time of construction, and be designed to meet the rating scores contained in paragraph (b) and the ground cover requirements of paragraph (c) when the vegetation matures within the 50 foot strip. At a minimum, the plan must provide for the establishment of a well-distributed planting of saplings spaced so that there is at least one sapling per 80 square feet of newly established buffer. Planted saplings may be no less than three (3) feet tall for coniferous species and no less than six feet tall for deciduous species. The planting plan must include a mix of at least three native tree species found growing in adjacent areas, with no one species making up more than 50% of the number of saplings planted unless otherwise approved by the Planning Board or its designee, based on adjacent stand comparison. All aspects of the implemented plan must be maintained by the applicant and future owners.

NOTE: Municipalities are encouraged to specify those professions which they deem qualified to prepare planting and mitigation plans, taking into account the availability of those professionals in the region. Such professionals may include, but are not limited to, foresters, arborists, landscape architects, and landscape contractors.

(1-C) Filing and reporting requirements. Written plans required pursuant to Section 14.12(C)(1-A)(d) must be filed with the registry of deeds of the county in which the property is located. A copy of all permits issued pursuant to this section must be forwarded by the municipality to the department within 14 days of the issuance of the permit.

(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 or its designee, 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 or its designee shall consider the size of the lot, the slope of the

land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, 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 or its designee in accordance with the purposes of this Article. 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 14.12(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 14.12(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 setback to the greatest practical extent the Planning Board or its designee shall consider, in addition to the criteria in Section 14.12(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, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other 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 14.12(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 14.12(C)(4) above.

E. Non-conforming Lots

- (1) **Non-conforming Lots:** A non-conforming lot of record as of the effective date of this Article 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 Article 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 Article, if all or part of the lots do not meet the dimensional requirements of this Article, 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 (12 M.R.S.A. sections 4807-A through 4807-D) and the State of Maine 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 Article, 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 Article.

- (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 Article, if any of these lots do not individually meet the dimensional requirements of this Article 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 Article 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 14.12(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.

14.13 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 Shoreland Commercial Industrial 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

December 31, 2008. 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) Floodplains along rivers and floodplains along artificially formed great ponds along rivers, defined by the 100 year floodplain 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 floodplain soils.

(3) Areas of two or more contiguous acres with sustained slopes of 20% or greater.

(4) 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.

NOTE: These areas usually consist of forested wetlands abutting water bodies and non-forested wetlands.

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

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 Shoreland Commercial Industrial District.

C. Shoreland Commercial Industrial District. The Shoreland Commercial Industrial District includes the following types of existing, intensively developed areas:

(1) Areas of two or more contiguous acres devoted to commercial, industrial or intensive recreational activities, or a mix of such activities, including but not limited to the following:

(a) Areas devoted to manufacturing, fabricating or other industrial activities;

(b) Areas devoted to wholesaling, warehousing, retail trade and service activities, or other commercial activities; and

(c) Areas devoted to intensive recreational development and activities, such as, but not limited to amusement parks, race tracks and fairgrounds.

(2) Areas otherwise discernible as having patterns of intensive commercial, industrial or recreational uses.

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 are 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.

14.14 Table of Land Uses.

All land use activities in the shoreland zone, as indicated in the Land Use Table in Section 6.2, shall conform with all of the applicable land use standards in Section 14.15. The district designation for a particular site shall be determined from the Official Shoreland Zoning Map.

Zoning District Abbreviations:

RP -	Resource Protection
LR -	Limited Residential
SP -	Stream Protection
SC/I-	Shoreland Commercial Industrial

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

A. Minimum Lot Standards

(1) See dimensional table below

	SP	RP	LR	SC/I
Minimum lot area (square feet.)	40,000	40,000	40,000	60,000
Minimum lot width (feet)	200	200	200	150
Minimum road frontage (feet)	200	200	200	150
Minimum shore frontage (feet)	200	200	200	300
Minimum front yard setback (feet)	50	50	50	25
Minimum side yard setback (feet)	25	25	25	15
Minimum rear yard setback (feet)	30	30	30	25
Maximum building height (feet)	35	35	35	45
Maximum lot coverage (percent)	10	10	20	70
Shoreline setback from river and great ponds	100	100	100	25
Shoreline setback from wetlands and streams	100	100	100	25

- (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 one hundred (100) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland, except that in the Shoreland Commercial Industrial District the setback from the normal high-water line shall be at least twenty five (25) feet, horizontal distance. 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) On a non-conforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the code enforcement officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure shall not exceed eighty (80) square feet in area or eight (8) feet in height, and shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.

NOTE: A tributary stream may be perennial or intermittent. Where a tributary stream is present within the shoreland zone, setback standards from that tributary stream are applicable.

- (2) Principal or accessory structures and expansions of existing structures which are permitted in the Resource Protection, Limited Residential, and Stream Protection Districts, shall not exceed thirty-five (35) feet in height, and shall not exceed forty-five (45) feet in height in the Shoreland Commercial/Industrial District. 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. In those municipalities that participate in the National Flood Insurance Program and have adopted the April 2005 version, or later version, of the Floodplain Management Ordinance, accessory structures may be placed in accordance with the standards of that ordinance and need not meet the elevation requirements of this paragraph.

- (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, except in the Shoreland Commercial Industrial District adjacent to rivers that do not flow to great ponds classified GPA where lot coverage shall not exceed seventy (70) percent.
- (5) 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, Wharves, 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) Except in the Shoreland Commercial Industrial Districts 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: New permanent structures, and expansions thereof, 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.

F. 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 Article, or thirty thousand (30,000) 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.

G. 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.

H. 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:

- (1) Auto washing facilities
- (2) Auto or other vehicle service and/or repair operations, including body shops
- (3) Chemical and bacteriological laboratories
- (4) Storage of chemicals, including herbicides, pesticides or fertilizers, other than amounts normally associated with individual households or farms

NOTE: 22 M.R.S.A. section 1471-U requires municipal ordinances that apply to pesticide storage, distribution or use be filed with the Maine Board of Pesticides Control, 28 State House Station, Augusta, ME 04333. If a municipality's ordinance is more inclusive or restrictive than these Guidelines, as it pertains to pesticides, a copy of the ordinance must be filed with the Board of Pesticides Control.

- (5) Commercial painting, wood preserving, and furniture stripping
- (6) Dry cleaning establishments
- (7) Electronic circuit assembly
- (8) Laundromats, unless connected to a sanitary sewer
- (9) Metal plating, finishing, or polishing
- (10) 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
- (11) Photographic processing
- (12) Printing

I. 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. The setback requirement for parking areas serving public boat launching facilities in Districts other than the Shoreland Commercial Industrial District shall be 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 further from the shoreline or tributary stream.
- (2) Parking areas shall be adequately sized for the proposed use and shall be designed to meet the stormwater performance standards in Article 7.16, and to meet the *Stormwater Management in Maine* manual, published by the Maine Department of Environmental

Protection, January 2006, where applicable. Privately owned stormwater management facilities shall be maintained in accordance with Article 7.22.

- (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.

- J. 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. Erosion and sedimentation control measures shall be designed and built according to the standards of the *Maine Erosion and Sediment Control BMP's* manual, published by the Maine Department of Environmental Protection, March 2003.

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 14.15 (I)(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 14.15(I)(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 their 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 14.15(R).
- (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:

Grade (Percent)	Spacing (Feet)
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, in accordance Article 7.22.

K. Signs. The following provisions shall govern the use of signs in the Resource Protection, Stream Protection, and Limited Residential:

- (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 are 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.

L. 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, in accordance with Article 7.22..

NOTE: The Stormwater Management Law (38 M.R.S.A. section 420-D) requires a Stormwater Management permit to be obtained from the Maine 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, or wetland watershed. A Stormwater 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. Any development that disturbs more than one acre, but does not require any of the following: A Stormwater Permit-By-Rule (under MEDEP Chapter 500), a full Stormwater Law Permit (under MEDEP Chapter 500) or a Site Law Permit (under Site Location of Development, 38 M.R.S.A., Article 6 Sections 481-490), is required by MEDEP to conform to the Maine Construction General Permit (MCGP) and submit a Notice of Intent (NOI). Developments that do require permits under MEDEP Chapter 500 or Site Location of Development are required to comply with the substantive requirements of MCGP, but are not required to submit a separate NOI.

M. 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.

N. 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.

- O. 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 14.15 (N)(4) 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 1301 and the solid waste management rules, Chapters 400-419 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 and one-half to one (2 1/2:1) slope or flatter.

- (c) Top soil 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 Article, 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.

P. 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 two-hundred fifty (250) feet, horizontal distance, of a great pond classified GPA or a river flowing to a great pond classified GPA, or within one hundred (100) 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 Article.
- (4) There shall be no new tilling of soil within two hundred fifty (250) feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within one hundred (100) feet, horizontal distance, from other water bodies; nor within one hundred (100) feet, horizontal distance, of tributary streams and freshwater wetlands. Operations in existence on the effective date of this Article and not in conformance with this provision may be maintained.

- (5) Newly established livestock grazing areas shall not be permitted within two hundred fifty (250) feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within one hundred (100) feet, horizontal distance, of other water bodies, nor; within one hundred (100) feet, horizontal distance, of tributary streams and freshwater 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.
- (6) If fertilizer will be applied within one hundred (100) feet horizontal distance of the normal high-water line of the Salmon Falls River then best management practices will be utilized including the following:
1. Use phosphorus-free fertilizer, unless a soil test indicates a low phosphorus level, or when establishing a new lawn from seed.
 2. Do not apply fertilizer between December 1 and April 1 or to frozen ground.
 3. Do not apply fertilizer or pesticides if moderate to heavy rain is imminent or if the soil is saturated.
 4. A filter strip of perennial vegetation shall be maintained along the normal high-water line of the Salmon Falls River at a width of ten (10) feet for average slopes of less than one (1) percent and proportionally up to at least (20) feet for slopes of fifteen (15) percent.

NOTE: 17 M.R.S.A. section 2805(4) requires a municipality to provide the Commissioner of Agriculture, Food and Rural Resources with a copy of any proposed ordinance that impacts farm operations. The law further requires the Commissioner to review the proposed ordinance and advise the municipality if the proposed ordinance would restrict or prohibit the use of best management practices. A copy of a shoreland zoning ordinance that regulates no more restrictively than contained in these Guidelines need not be provided to the Commissioner of Agriculture, Food and Rural Resources.

Q. 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 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.
 - (b) Beyond the 75 foot strip referred to in Section 14.15(P)(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.

- (2) Except in areas as described in Section 14.15(P)(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.
 - (b) 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.
 - (c) 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.
 - (d) 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.
 - (e) 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.
 - (f) 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.

R. Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting

- (1) In the 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 14.15P(1), above, and except to allow for the development of permitted uses, within a strip of land extending 100 feet horizontal distance from the high water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and 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 14.15(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 12 or more in each 25-foot by 25-foot square (625 square feet) area as determined by the following rating system:

<u>Tree at 4 1/2 feet above ground level (inches)</u>	<u>Points</u>
2-4 in.	1
>4-12 in.	2
>12 in.	4

Adjacent to other waterbodies, tributary streams, and wetlands, a "well-distributed stand of trees" is defined as maintaining a minimum rating score of 8 per 25-foot square area.

Notwithstanding the above provisions, no more than 40 percent 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 14.15(R) paragraphs (2) and (2)(a) above.
- (d) Pruning of tree branches, on the bottom one-third 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.

Section 14.15(R)(2) does 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.

- (f) For the purposes of Section 14.15(R)(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 three (3) saplings less than two (2) inches in diameter at four and one-half (4 1/2) feet above ground level for each 25-foot rectangular area. If three (3) saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 3 saplings have been recruited into the plot.
- (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 75 feet, horizontal distance, from the normal high water line of any water body, tributary stream, or the upland edge of a wetland, there shall be allowed on any lot, in any ten 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 percent 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 14.15(R).

S. 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. Erosion and sedimentation control measures shall be designed and built according to the standards of the *Maine Erosion and Sediment Control BMP's* manual, published by the Maine Department of Environmental Protection, March 2003. 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 rip-rap.
- (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) 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 riprap.
- T. 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.
- U. 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.
- V. Archaeological Site. 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.

NOTE: Municipal officials should contact the Maine Historic Preservation Commission for the listing and location of Historic Places in their community.

14.16 Administration

- A. Permits Required. After the effective date of this Article 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 Article 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 Article shall be in addition to any other permit required by other law or ordinance.

B. Permit Application

- (1) Every applicant for a permit shall submit a written application, including a scaled site plan, on a form provided by the municipality, to the appropriate official as indicated in Section 14.14.
- (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.

- C. Procedure for Administering Permits. Within 35 days of the date of receiving a written application, the Planning Board or Code Enforcement Officer, as indicated in 14.14, 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 the proposed use or structure is found to be in conformance with the purposes and provisions of this Article.

The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Article.

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 floodplain development and use; and
- (8) Is in conformance with the provisions of Section 14.15, Land Use Standards.

If a permit is either denied or approved with conditions, the reasons as well as 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 statute administered by the municipality.

- D. 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.
- E. Installation of Public Utility Service. A public utility, water district, sanitary district or any utility company of any kind may not 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 Article has been issued by the appropriate municipal officials or other written arrangements have been made between the municipal officials and the utility.

F. 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 Code Enforcement Officer in his or her review of and action on a permit application under this Article. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this Article is not appealable to the Board of Appeals.
 - (b) Variance Appeals: To authorize variances upon appeal, within the limitations set forth in this Article.
- (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 Article.
- (c) The Board of Appeals shall not grant a variance unless it finds that:
 - (i) The proposed structure or use would meet the provisions of Section 14.15 except for the specific provision which has created the non-conformity and from which relief is sought; and
 - (ii) The strict application of the terms of this Article would result in undue hardship. The term "undue hardship" shall mean:
 - a. That the land in question cannot yield a reasonable return unless a variance is granted;
 - 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;
 - 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.
- (d) Notwithstanding Section 16(F)(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 Article 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.
- (f) A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

(3) 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.

(4) Appeal Procedure

(a) Making an Appeal

- (i) 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, except for enforcement-related matters as described in Section 16(F)(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.
- (ii) Applications for appeals shall be made by filing with the Board of Appeals a written notice of appeal which includes:
 - a. A concise written statement indicating what relief is requested and why the appeal or variance should be granted.
 - b. 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.
- (iii) Upon receiving an application for an administrative appeal or a variance, the Code Enforcement Officer, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
- (iv) 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

- (i) A majority of the full voting membership of the Board shall constitute a quorum for the purpose of deciding an appeal.
- (ii) The person filing the appeal shall have the burden of proof.
- (iii) The Board shall decide all administrative appeals and variance appeals within thirty five (35) days after the close of the hearing, and shall issue a written decision on all appeals.
- (iv) 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.

G. Enforcement

- (1) Nuisances. Any violation of this Article shall be deemed to be a nuisance.
- (2) Code Enforcement Officer
 - (a) It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Article. If the Code Enforcement Officer shall find that any provision of this Article 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 of illegal 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.
 - (b) 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 Article.
 - (c) 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 a biennial 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.

- (3) 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 Article in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Article 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 Article 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).

ARTICLE XV Community Facilities Impact Analysis

15.1. Purpose of Program

The Town of Berwick finds that new development places demands on municipal government to provide new services and expand and improve public facilities. In order to provide an equitable source of funding for these new services and facilities, the Town of Berwick has established a municipal infrastructure facilities improvement program. Under this program, persons or entities will be charged for an amount of the costs for creating and maintaining infrastructure, facilities, and other improvements in proportion to the degree said persons are responsible for the need for such infrastructure, facilities and improvements.

15.2 Authority

This section of the Berwick Land Use Ordinance is adopted pursuant to 30-A M.R.S. § 4354 *et seq.*

15.3 Use of Impact Fees

A. Impact fees may only be used for financing infrastructure facilities improvements needed due to demand caused by new growth.

B. Impact fees may not be used for any of the following

1. Operations and maintenance costs, such as but not limited to paying salaries, day-to-day operational costs or replacement of existing equipment,
2. The costs to improve infrastructure facilities to meet existing deficiencies, such as but not limited to relieving existing congestion or overcrowding

15.4 Applicability

A. The Code Enforcement Officer shall require the applicant for a Building Permit to participate in the municipal infrastructure facilities improvement program and pay a development impact fee at the rate currently in effect. The total impact fee shall be paid separately from any other fees required by this Ordinance and shall be paid at the time the Occupancy Permit is issued

B. The Board of Selectmen shall establish the initial impact fee schedule and shall review and revise, if necessary the impact fee schedule at least annually to reflect changes in planned improvements current budget levels and compliance with the Town of Berwick Comprehensive Plan and the Town's Capital Improvement Program. Prior to the establishment or revision of the impact fee schedule, the Board of Selectmen shall hold two public hearings on the proposed fee schedule. Notice of the public hearings shall be published in a newspaper of general circulation within the Town at least twice. The first notice shall be published no more than thirty (30) days in advance of the hearings and the second no less than seven (7) days in advance of the hearings.

C. The impact fee schedule shall indicate the improvements to be financed, the anticipated schedule for construction, and the characteristic of new development by which the fee shall be calculated (e.g., a fixed rate multiplied by the number of bedrooms, a per unit per square foot, amount of traffic generated, etc).

D. The amount of the fee shall be reasonably related to the development's share of the cost of the infrastructure facilities improvements made necessary by the development or, if the improvements were previously constructed at municipal expense prior to the development, the fee must be reasonably related to the portion or percentage of the improvement used by the development.

15.5 Segregation of Impact Fees from General Fund

A. The Code Enforcement Officer shall record the name of the individual paying the impact fee. The Tax Assessor's map and lot numbers for the property for which the impact fee is being paid, the amount of the fee paid for the facility for which fees are collected, and the date the impact fee was paid.

B. Upon collection of an impact fee, the Code Enforcement Officer shall transfer the funds to the Municipal Treasurer who shall deposit the impact fee in special non lapsing accounts dedicated for funding the improvements for which the fee is collected.

C. Impact fee funds shall be maintained separately from and shall not be combined with other municipal revenues.

D. Funds collected as impact fees shall be expended only for the infrastructure improvement for which the fee was collected.

15.6 Refund of Impact Fees

The Town shall refund any Impact fees (or portion thereof) that exceed the Town's actual costs which have not been expended within ten (10) years of the date they were first collected. The Board of Selectmen shall establish the procedure for refunding such impact fees. Unexpended fees shall be returned to the owner of record at the time a refund is issued, regardless of when said impact fees were received.

BERWICK WATER DEPARTMENT

CROSS-CONNECTION CONTROL PROGRAM ORDINANCE

I. PURPOSE

Cross-connections between water supplies and non-potable sources of contamination represent one of the most significant threats to health in the water supply industry. This program is therefore designed to maintain the safety and potability of the water in the supplier's system by preventing the introduction of any foreign liquids, gases or other substances, other than water from the intended source.

II. AUTHORITY

This program derives its enforceability from Title 22, MRSA, C 601, sub-chapter 2, Sec. 2612(5) Maine Department of Human Services, Cross-Connection Rules 10-144ACMR226. In addition, authority rises from the Rules and Regulations as published by the Berwick Water Department and as approved by the Public Utilities Commission of the State of Maine and from provisions of the Occupational Safety and Health Act, and from provisions of the State Plumbing Code Part I, 10-144A CMR 238.

III. DEFINITIONS

A. Backflow

The flow of water or other foreign liquids, gases or other substances into the distribution system of a public water supply from any source other than the intended.

B. Backflow Preventer

A device to prevent backflow (See Appendix I)

1. Air Gap

A physical separation sufficient to prevent backflow between the free-flowing discharge end of the potable water system and any other system.

2. Atmospheric Vacuum Breaker

A device which prevents back-siphonage by creating an atmospheric vent where there is either a negative pressure or sub-atmospheric pressure in a water system.

3. Backflow Preventer with Intermediate Atmospheric Vent

A device having two check valves separated by an atmospheric vent.

4. Double Check Valve

A device having two, weight or spring loaded, bronze faced with soft rubber disc check valves with shutoff valves and test cocks for periodic testing.

5. Hose Bibb Vacuum Breaker

A device which is permanently attached to a hose bibb and which acts as an atmospheric vacuum breaker.

6. Pressure Vacuum Breaker

A device containing a spring loaded check valve and a spring loaded atmospheric vent which opens when pressure approaches atmospheric. It contains valves and fittings which allow the device to be tested.

7. Reduced Pressure Principle Backflow Preventer

An assembly of check valves and a reduced pressure zone which spills water to the atmosphere in event of the failure of the check valves. It has valves and fittings which allow the device to be tested.

C. Back-siphonage

Backflow resulting from negative or less than atmospheric pressure in the water system.

D. Back-pressure

A condition in which the owner's system pressure is greater than the supplier's system pressure.

E. Containment

A method of backflow prevention which requires a backflow preventer at the water service entrance.

F. Cross-connection

Any physical connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other water or other substances of unknown or questionable safety, whereby water or other substances may flow from one system to the other, the direction of flow depending on the pressure differential between the two systems.

G. Department

State of Maine Department of Human Services

H. Fixture Isolation

A method of backflow prevention in which a backflow preventer is located to correct a cross-connection at an in-plant unit rather than at the water service entrance.

I. Owner

Any person who has legal title to, or license to operate or habitate in, a property upon which a cross-connection inspection is to be made or upon which a cross-connection is present.

J. Permit

A document issued by the Department with the approval of the Supplier, which allows the use of a backflow preventer.

K. Person

Any individual, partnership, company, public or private corporation, political subdivision or agency of the State, department, agency or instrumentality of the United States or any other legal entity.

L. Supplier - Berwick Water Department

Any person who controls, owns, or generally manages a system of pipes, structures and facilities through which water is delivered for human consumption.

M. Water Service Entrance

That point in the owner's water system beyond the sanitary control of the supplier. This will ordinarily be the outlet end of the meter and will always be before any unprotected branch.

IV. ADMINISTRATION

A. The Supplier shall develop and operate a cross-connection control program, including keeping necessary records, which fulfills the requirements of the Department's Cross-Connection Rules and is approved by the Department.

B. The Owner shall allow his property to be inspected for possible cross connections and shall follow the provisions of the Supplier's program or the Department's Cross-Connection Rules if a cross-connection is permitted.

C. If the Supplier requires that the public supply be protected by containment, the Owner shall be responsible for water quality beyond the outlet end of the containment device.

D. Both the Supplier and the Owner shall attempt to eliminate all cross-connections.

V. RESPONSIBILITY

A. Supplier's Responsibility

1. The Supplier's inspections for cross-connections or potential cross-connections shall be made during normal working hours unless otherwise arranged with the owner.
2. The Supplier will, after the initial inspection of plans or premises, inform the owner by letter of any correction deemed necessary, the method of making the correction, and the time allowed before correction is required. (Note: a maximum time of 30 days is suggested)
3. The Supplier will not allow any cross-connection to remain unless it is protected by an approved backflow preventer, for which a permit has been issued and which is regularly tested and operates satisfactorily. Certain fixtures are exempted from this provision and are listed in Section VIII.
4. The Supplier shall inform the Owner by letter of any failure to comply by the time of the first re-inspection. The Supplier will allow additional sufficient time for the correction. (Note: a maximum time of 15 days is suggested) If there is a failure to comply by the time of the second re-inspection, the Supplier shall inform the Owner by letter that water service to the Owner's premises will be terminated. (Note: It is suggested that the termination procedure be that specified in the Suppliers rules and regulations for non-payment).
5. If the Supplier determines at any time that a serious threat to the public health exists, service shall be terminated immediately.
6. Re-establishment of service before the installation of a backflow preventer may be allowed by the Supplier after an agreement has been made between the Supplier, the Department and the Owner indicating the intention of the Owner to comply with the provisions of the agreement.
7. The Supplier shall maintain an inspection program which covers all industrial customers every three years and all commercial customers every five years. (Note: It is suggested that these times be shortened depending upon the number of industrial or commercial customers served by the Supplier.)
8. The Supplier will make sure that new water service areas and all new construction, including residential, complies with the Cross-Connection Program and with the Maine State Plumbing Code. A copy of the Plumbing Inspector's Certificate of Completion should be obtained by the Supplier.

9. The Supplier shall inspect dwellings with more than four apartments and require that they comply with the Cross-Connection Program.

10. The Supplier should encourage Owners of dwellings with four or less apartments to install backflow preventers on hose bibbs and shall warn them of the possible hazards of devices such as siphon type pesticide or fertilizer sprayers, water operated sump pumps, etc.. The Owner may be required to install a backflow preventer at the service entrance, if deemed necessary. (Note: This section does not exclude the use of a single check valve at the service entrance.

B. Owner's Responsibilities

1. The Owner, after being informed by a letter from the Supplier, shall at his expense install, maintain and test, or have tested, any backflow preventer on his premises.

2. The Owner shall correct any malfunction of the backflow preventer which is revealed by periodic testing. This shall include the replacement of parts or the replacement of the backflow preventer if deemed necessary by the Supplier.

3. The Owner shall inform the Supplier of any new proposed or modified cross-connection and also any existing cross-connection which the Owner is aware of but has not been found by the Supplier.

4. Any Owner having a private well or other private water source must have a permit if the well or source is cross-connected to the Supplier's system, and permission to cross-connect may be denied by the Supplier. The Owner may be required to have a backflow preventer at the service entrance if a private water source is maintained, even if it is not cross-connected to the Supplier's system.

5. The Owner shall not install a by-pass around any backflow preventer unless there is a backflow preventer on the by-pass. Owners who cannot shut down operation for testing must supply the additional devices necessary to allow testing to take place.

6. The Owner shall only install backflow preventers listed or approved by the Supplier and the Department.

7. The Owner shall install the backflow preventer in a manner approved by the Supplier. Pit installations are strongly discouraged and must have Department approval before a permit will be issued.

8. If the Owner installs plumbing to provide potable water for domestic purposes which is on the Supplier's side of the backflow preventer, such plumbing must have its own backflow preventer.

VI. DEGREE OF HAZARD

The Supplier recognizes the difference in the threat to the public water system arising from different types of connection. These can be classified as follows:

A. Class I - Low Degree of Hazard

If backflow were to occur, the resulting health significance would be limited to minor changes in the esthetic quality such as taste, odor or color. The foreign substance must be non-toxic and non-bacterial in nature and have no significant health effect.

B. Class II - Moderate Degree of Hazard

If backflow were to occur, the resulting effect on the water supply would be significant changes in esthetic qualities. The foreign substance must be non-toxic to humans and non-bacterial in nature.

C. Class III - High Degree of Hazard

If backflow were to occur, the resulting effect on the water supply could cause illness or death if consumed by humans. The foreign substance may be toxic to humans either chemically, bacteriologically or radiologically. Toxicity may result from either short or long term exposure.

1. Class III hazards can be protected against by containment or fixture isolation. Examples of establishments which will be controlled by containment are:

a. Wastewater installations

- i. Treatment plants
- ii. Pump stations including storm water pump stations
- iii. Industrial waste treatment plants.

b. Industries where a health hazard exists.

c. Hospitals, nursing homes, clinics, etc.

d. Vessel watering points or fixtures.

e. Tank trucks, street sweepers, and other similar units which receive water at the Supplier's shop or any of its hydrants.

Examples of establishments which the Supplier may cause to be controlled by either containment or fixture isolation are:

- a. Laboratories
- b. Mortuaries or Funeral Homes
- c. High pressure boilers
- d. Chemically treated low pressure boilers

- e. Lawn irrigation systems
- f. Swimming pools
- g. Car wash facilities
- h. Farms where water is used for other than domestic purposes.
- i. Commercial installations with very small industrial functions.

VII. PERMITS

A. Permits will be issued by the Department upon recommendation of the Supplier for any backflow situation except those listed as exemptions in Section VIII, Part C.

B. Permits will only be issued if the cross-connection is deemed necessary and cannot be eliminated.

C. The degree of hazard will be stated on the permit.

D. The frequency of testing of the backflow preventer will be stated on the permit.

E. The type, model and make of the backflow preventer will be listed on the permit. If more than one device is used to protect a single cross-connection, it shall be listed on the permit.

F. Any exemption will be listed on the permit.

G. Permits shall be non-transferrable.

H. Permits shall be renewed every five years.

VIII. EXEMPTIONS

A. Any cross-connection protected against backflow, at the time this program goes into effect, may continue with that same protection unless:

1. The existing protection is grossly inadequate.
2. The Department notifies the Supplier, in writing, that a change must be made.

B. The exemption will be expired at any time the backflow preventer must be replaced and the replacement backflow preventer must be that required by the degree of hazard involved.

C. Certain fixtures which constitute cross-connections may be controlled by non-testable backflow preventers and will not require a permit. Examples of these fixtures are as follows:

1. Hose bibbs which are only potential cross-connections.

2. Below the rim outlets which can be replaced by a gooseneck device.
3. Toilets with anti-siphon ballcocks.
4. Any fixture with a built-in atmospheric vacuum breaker which can not be bypassed.
5. Others as listed in Appendix A of the State regulations.

IX PERIODIC TESTING

It is recognized that any backflow preventer can fail and any method of protection can be subverted; thus, periodic testing and inspection is necessary. This includes air gap protection.

A. Periodic testing shall be performed by the Owner or the Supplier or the Supplier's agent.

B. The time interval for testing a backflow preventer shall be stated on the permit and shall be determined by the Supplier.

C. Any backflow preventer which fails during test will be immediately repaired. The Supplier shall require that repair parts be ordered within 24 hours and that shipment be by the fastest means possible. Any extended delay (more than seven days) shall require discontinuance of service or other means to insure protection of the public water system.

D. Certain Class III degree of hazard situations will not be allowed to continue unprotected if the backflow preventer fails the test and cannot be immediately repaired. The Owner will be the person responsible for the provision of spare parts and should have a supply on hand.

DATE 1-21-92

Keith L. Rawles
Samuel S. Mathis
Richard F. Hayes
Shirley M. Mitchell
Anthony J. Cusick
BERWICK BOARD OF SELECTMEN

TOWN OF BERWICK

DISBURSEMENT WARRANT ORDINANCE

Section 1. Purpose

The purpose of the ordinance is to provide an emergency alternative to the statutory procedure for the approval of warrants authorizing the Town Treasurer to disburse public funds.

Section 2. Authority

This ordinance is enacted pursuant to Title 30-A of the Maine Revised Statutes Annotated, Sections 3001 and 5603 (2) (A).

Section 3. Procedure for Emergency Disbursements

- A. Emergency-Defined. Emergency or purpose of this ordinance means those times when a majority of duly elected Selectmen cannot meet or act collectively due to:
 - 1. Vacancies in the office of Selectmen;
 - 2. The death, recall or resignation of three or more Selectmen; or
 - 3. The sickness or incapacity of three or more Selectmen.

- B. Authority. In the case of an emergency as defined herein, the Town Treasurer may disburse public funds for a particular purpose.
 - 1. Upon receipt of a duly executed warrant seen and signed by a majority of the selectmen acting individually and separately, or
 - 2. Upon receipt of a duly executed warrant seen and signed by a Selectman when only less than a majority is serving.

Section 4. Limitations.

In the event less than a majority is serving, Selectmen may not execute or issue a warrant increasing any Town Employee's wage's or benefits, including but not limited to, the employee's hourly rate, salary, or bonus, and further, Selectmen may not execute or issue disbursement warrant authorizing a disbursement amount exceeding the amount budgeted and approved for that particular purpose at Town meeting except where such a disbursement is otherwise permitted or required by law.

Section 5. Effective Date.

This ordinance becomes effective upon the date of its approval.

DISORDERLY BUILDING ORDINANCE

Disorderly Buildings Prohibited

- (a) No person shall let any dwelling, dwelling unit, rooming house, or rooming unit (hereinafter jointly and severally "building") which is Disorderly as defined herein for any period of time other than that which may be required by landlord tenant or other applicable federal, state or local law.
- (b) A "Disorderly Building" is any building which:
 - (1) The police have visited a minimum number of times in any thirty (30) day period, as set forth in paragraph (3) below, in response to situations which are created by the owner, tenants, or owner's or tenants' cohabitants, guests or invitees (hereinafter jointly "responsible parties" and severally "responsible party"), and which would have a tendency to unreasonably disturb the community, the neighborhood or an ordinary individual in the vicinity of said building, through means including but not limited to the presence, occurrence or existence of the following: unreasonably loud music; unreasonably boisterous parties; sounds emanating from within the structure which are unreasonably audible outside the building; loud arguments or fights within the building or in its vicinity involving the responsible parties of the building (excluding incidents involving domestic violence); the responsible parties being intoxicated on public ways in the vicinity of the building; and other similar activities in or outside the building; For purposes of this ordinance, unreasonably shall be defined to equate with any instance of the foregoing behavior or actions which results in action by the Town of Berwick Police Department including or more serious than issuance of a written warning; or
 - (2) The police have visited three (3) or more times in any thirty (30) day period in response to situations which are created by the responsible parties and involve the arrest of any responsible party for activities which constitute either a crime or civil infraction under state or local law, or which create a reasonable suspicion that illegal drug use or drug sales under 17-A M.R.S.A. chapter 45, or prostitution or public indecency under 17-A M.R.S.A. chapter 35, have occurred.

per incident in excess of the minimum number needed to establish a building's status as a Disorderly Building, as defined above, and all legal and processing expenses incurred by the Town.

If the same building should be classified as a Disorderly Building on a subsequent occasion within three (3) years, then the Town may proceed directly with a complaint to District Court without additional notification to the owner other than that required by law, in order to seek all relief permitted by this ordinance or any other law.

Cost of service for responses to buildings deemed disorderly

- (a) Whenever the police department is required to respond to a situation at a building that has been deemed disorderly by the Town, as defined hereinabove, and such response both stems from an action or occurrence which is itself grounds for a finding of a disorderly building as described herein and also constitutes at least the third (3rd) such response in any thirty (30) day period, the owner of the Disorderly Building shall be deemed to have refused or failed to take or implement effective measures to address the Disorderly Building, and shall be subject to immediate action in District Court as outlined above. In such instances, the owner shall, furthermore, pay the cost of service for each such response as follows:
 - (1) For each such response for service the owner shall pay one hundred dollars (\$100.00) which shall be in addition to any court imposed penalty arising under this ordinance or any other law.
 - (2) Failure to pay the cost of service within thirty (30) days after demand therefor has been made shall subject the owner to an additional \$25.00 fee, which shall recur every additional thirty (30) day time period thenceforth until the initial fee is paid.
 - (3) After sixty (60) days of non-payment, any charges imposed under this section (a) shall be treated as liens on the property.

Town of Berwick Emergency Management Ordinance

Section 1. Short Title

This Ordinance shall be known and may be cited and referred to as the Berwick Emergency Management Ordinance. It is authorized by 37B MRSA 781 - 834 as may be amended.

Section 2. Intent and Purpose

A. It is the intent and purpose of this Ordinance to establish an Office that will insure the complete and efficient utilization of all the Town's facilities to combat emergencies and disasters as defined herein.

B. The Berwick Office of Emergency Management will be the coordinating agency for all activity in connection with civil emergency preparedness.

C. This Ordinance will not relieve any Town department of its normal legal responsibilities or authority nor will it adversely affect the work of any volunteer agency organized for relief in disaster emergencies.

D. This Ordinance shall be administered in conjunction with the appropriate elements of the Berwick Emergency Plan as adopted by the Municipal Officers of the Town.

Section 3. Definitions

A. "Emergency Management" means the preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to minimize and repair injury and damage resulting from disasters or catastrophes caused by enemy attacks, sabotage, riots or other hostile action, or by fire, flood, earthquake or other natural or man made causes. These functions include without limitation, fire fighting, police, medical and health, emergency welfare, rescue, engineering, warning and communications services; evacuation of persons from stricken areas; economic stabilization; allocation of critical

materials in short supply; emergency transportation; existing or properly assigned functions of plant protection; other activities related to civilian protection and other activities necessary to the preparation for the carrying out of these functions.

B. "Disaster" means the occurrence of widespread or severe damage, injury or loss of life or property resulting from any natural or man-made cause, including, but not limited to, fire, flood, earthquake, windstorm, wave action, oil spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, hazardous materials incident, blight, drought, critical material shortage and explosion; said occurrence(s) being of significant scope as to exceed the normal ability of the Town's resources to mitigate, respond to or recover from.

C. "Emergency" means any event which threatens to or actually inflicts damage to people or property and which requires immediate action to mitigate, prevent, control, contain or from which normal recovery is beyond the scope of the normal resources of the Town.

D. "Emergency Preparedness Forces" shall mean the employees, equipment and facilities of all Town departments, boards, and agencies; in addition, the term includes all volunteer personnel, equipment and facilities contributed by or obtained from volunteer persons or agencies.

E. "Emergency Preparedness Volunteer" shall mean any person duly registered, identified and appointed by the Berwick Emergency Management Director.

F. "Director" shall mean the Director of the Berwick Emergency Management Office as duly appointed as prescribed in this Ordinance.

Section 4. Organization and Operation

A. Organization. The Town Manager is hereby authorized to organize the Office of Emergency Management utilizing to the fullest extent possible the existing departments and agencies of the Town.

B. Operation. There shall be an executive head of the Office of Emergency Management who shall be known as the Emergency Management Director. The Director shall be appointed by the Town

Manager in the same manner as the Town Manager makes other appointments which are subject to the approval of the Municipal Officers. The Director shall head the Office of Emergency Management and shall work under the general supervision of the Town Manager. In emergency situations, the Director is authorized to hire assistants and employees with the consent of the Town Manager. Such hires shall be temporary and shall not be considered full-time employees of the Town.

C. Administration. The Director shall administer the Office of Emergency Management in accordance with the provisions of this Ordinance, the provisions of the Berwick Emergency Plan and any other related policies adopted by the Municipal Officers and the provisions of any applicable state and federal laws and rules which may apply in a particular emergency situation.

Section 5. Emergency Proclamation. Whenever a local disaster exists or appears imminent, the Town Manager, or in the event of his absence, the designated Acting Town Manager or, if there is no designated Acting Town Manager, the Chairperson of the Berwick Board of Selectmen shall, by proclamation, declare that fact and that an emergency exists in the Town of Berwick. A copy of the proclamation shall be posted in the same manner as a warrant calling a town meeting with the return to be made by the person posting it and a copy of the proclamation shall be provided to the Town Clerk who shall retain it as a permanent record of the Town.

Section 6. Emergency Powers and Duties.

A. During any period when a local disaster has been proclaimed or when the Governor has proclaimed a disaster pursuant to 37B MRSA 742, the Town Manager or his designate may promulgate such regulations as he may deem necessary to protect life and property and preserve critical resources. Such regulations may include, but are not limited to, the following:

(1) Regulations prohibiting or restricting the movement of vehicles in order to facilitate the work of Emergency Preparedness forces or to facilitate the mass movement of persons from critical areas within the Town.

(2) Regulations pertaining to the movement of persons deemed

hazardous or vulnerable to disaster.

(3) Such other regulations as may be necessary to preserve public health and safety.

(4) The Board of Selectmen is authorized to compensate volunteer/call personnel for time spent during a declared emergency involving the Town of Berwick.

B. The Town Manager may obtain vital supplies, equipment and other properties found lacking and needed for the protection of health, life and property of the people and may bind the Town for the fair value thereof.

C. The Town Manager or his designate may require emergency services of any Town Officer or employee. If regular Town forces are deemed inadequate, the Director may require the services of such other personnel as can be obtained including citizen volunteers. All duly authorized persons rendering emergency services shall be entitled to all privileges and immunities provided by law.

Section 7. Termination of Emergency. Whenever the Town Manager or his designate is satisfied that a local emergency or disaster no longer exists, he shall terminate the emergency proclamation by posting another proclamation so stating. The proclamation shall be posted in the same manner as the original one with a copy to the Town Clerk. Local representatives of the news media shall be advised of the termination of the emergency as soon as is practicable.

Section 8. Duties of the Director of the Berwick Emergency Management Office.

A. The Director shall be responsible to the Town Manager in regards to all phases of Emergency Preparedness activity. The Director shall be responsible for planning, coordinating and operating the Emergency Preparedness activity within the Town. The Director shall maintain liaison with county, state and federal authorities and the authorities of nearby municipalities to insure the most effective response to an emergency. The duties of the Director shall include but not be limited to the following:

(1) Coordinating the recruitment of volunteer personnel and agencies to augment the personnel and facilities of the Town for response in an emergency.

(2) Development of plans for the immediate use of all the facilities, equipment, manpower and other resources of the Town for the purpose of minimizing or preventing damage to persons and property; and protecting and restoring to usefulness government services and public utilities necessary for the public health, safety and welfare.

(3) Negotiating and concluding voluntary agreements with owners or persons in control of buildings or other property for Emergency Preparedness purposes and identifying suitable buildings for use as public shelters.

(4) Through use of educational programs, informing the Town's population about Emergency Preparedness matters and advising as to what actions should be taken during an emergency to protect life and property.

(5) From time to time, conducting public practice alerts and drills to familiarize the Town's population with emergency response procedures.

(6) Assuming such authority and conducting such activity as the Town Manager or the Municipal Officers may direct to promote and better execute Emergency Preparedness activities.

Section 9. Emergency Plan. The Municipal Officers shall adopt an Emergency Plan upon the recommendation of the Town Manager and the Director. The Plan shall complement this Ordinance and shall provide the framework within which Emergency Response activities shall happen.

Section 10. Violations. It shall be a violation of this Ordinance for any person to obstruct, hinder or delay any member of the Emergency Preparedness organization as herein defined in the enforcement of any provision of this Ordinance or any regulation promulgated under its authority. Any person, firm or corporation found to have violated any provision of this Ordinance or any regulation promulgated under its authority in a court with jurisdiction to act on a complaint from the Town shall be subject to a fine of not more than five hundred dollars (\$500)

which fine shall accrue to the Town.

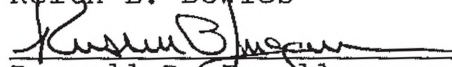
Section 11. Severability. Should any provision of this Ordinance be declared invalid for any reason by a court with jurisdiction to do so, such a declaration shall not affect the validity of other provisions of this Ordinance or the Ordinance as a whole it being the legislative intent that the provisions of this Ordinance shall be severable and shall remain valid notwithstanding such a judicial declaration against one provision.


Article 12. Conflicting Ordinances, Orders, Policies and Regulations. At all times during declared periods of emergency, the provisions of this Ordinance shall supersede all existing ordinances, orders, policies and regulations insofar as the latter may be inconsistent therewith.

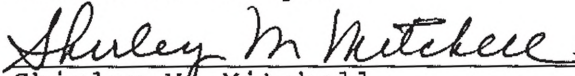
Article 13. Effective Date. This Ordinance shall take effect immediately upon its passage by the voters at an annual or special Town Meeting in the Town of Berwick.

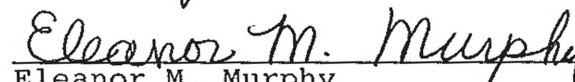
CERTIFIED BY:


Keith L. Bowles

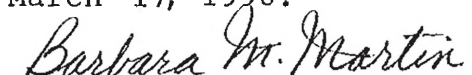

Russell B. Ingalls


Thomas J. Lavigne


Shirley M. Mitchell


Eleanor M. Murphy

ATTEST: A true copy of an Ordinance entitled
"Town of Berwick Emergency Management
Ordinance", as certified to me by the
Municipal Officers of Berwick, on
March 17, 1998.


Barbara M. Martin, Town Clerk

Town of Berwick Fireworks Ordinance

I. Preamble

WHEREAS, an Act to Legalize the sale, possession, and use of fireworks was passed by the 125th Maine legislature and signed on 2011-07-01 (codified in 30-A M.R.S. § 223-A);

WHEREAS, the Town of Berwick recognizes the potential for fire, injury to persons and property, and nuisances created by the sale, possession, and use of fireworks;

THEREFORE, based upon the foregoing findings, be it hereby ordained that the Town of Berwick does enact the following Ordinance regulating the sale, possession, and use of fireworks and consumer fireworks in the Town of Berwick.

II. Title and Authority

This ordinance shall be known as the “Town of Berwick Fireworks Ordinance.” It is adopted pursuant to the enabling provisions of the Maine Constitution, the provisions of 30-A M.R.S. § 223-A

III. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1-A. Consumer fireworks. "Consumer fireworks" has the same meaning as in 27 Code of Federal Regulations, Section 555.11 or subsequent provision, but includes only products that are tested and certified by a 3rd-party testing laboratory as conforming with United States Consumer Product Safety Commission standards, in accordance with 15 United States Code, Chapter 47. "Consumer fireworks" does not include the following products:

- A. Missile-type rockets, as defined by the State Fire Marshal by rule;
- B. Helicopters and aerial spinners, as defined by the State Fire Marshal by rule;
- and
- C. Sky rockets and bottle rockets. For purposes of this paragraph, "sky rockets and bottle rockets" means cylindrical tubes containing not more than 20 grams of chemical composition, as defined by the State Fire Marshal by rule, with a wooden stick attached for guidance and stability that rise into the air upon ignition and that may produce a burst of color or sound at or near the height of flight.

2. Display. "Display" means an entertainment feature where the public or a private group is admitted or permitted to view the display or discharge of fireworks or special effects. "Display" includes a special effects display.

3. Fireworks. "Fireworks" means any:

- A. Combustible or explosive composition or substance;

B. Combination of explosive compositions or substances;

C. Other article that was prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, including blank cartridges or toy cannons in which explosives are used, the type of balloon that requires fire underneath to propel it, firecrackers, torpedoes, skyrockets, roman candles, bombs, rockets, wheels, colored fires, fountains, mines, serpents and other fireworks of like construction;

D. Fireworks containing any explosive or flammable compound; or

E. Tablets or other device containing any explosive substance or flammable compound. The term "fireworks" does not include consumer fireworks or toy pistols, toy canes, toy guns or other devices in which paper caps or plastic caps containing 25/100 grains or less of explosive compound are used if they are constructed so that the hand can not come in contact with the cap when in place for the explosion, toy pistol paper caps or plastic caps that contain less than 20/100 grains of explosive mixture, sparklers that do not contain magnesium chlorates or perchlorates or signal, antique or replica cannons if no projectile is fired.

4. Permit. "Permit" means the nontransferable permission granted by the authority having jurisdiction.

5. Person. "Person" means any natural person, combination of natural persons, association, municipality, amusement park or other legal or commercial entity.

6. Possession. "Possession" means the ownership, possession or control over an object that is the subject of this ordinance..

7. Sale or sell. "Sale" or "sell" means any transfer or delivery of fireworks or consumer fireworks to a person for consideration.

8. Use. "Use" means the action of using any fireworks or consumer fireworks.

IV. Prohibitions/Limitations:

A person may not use, sell or offer for sale, or possess with the intent to sell consumer fireworks, as defined in 8 M.R.S. § 221-A, in the Town of Berwick except as follows:

A. Use. Consumer fireworks may only be used under the following conditions:

(a) By a person 21 years of age or older

(b) Between 12:00 p.m. and 10 p.m. except on July 4th and December 31st when they may be used between 9:00 a.m. and 12 a.m. the following day;

(c) On the property of the person using the fireworks or on the property of a person who has consented to the use of consumer fireworks on that property. If the user is a tenant of a property then written consent from the landlord is required;

- (d) At least fifty (50) feet from any combustible structures; and
- (e) When the fire danger conditions, as determined by the Maine Forest Service, are Class 1, 2, or 3.

B. Sale. Consumer fireworks may only be sold, offered for sale, or possessed with the intent to sell by a person whom:

- (a) Holds a current federal permit to sell fireworks under 18 United States Code § 843;
- (b) Holds a current State license for sale of consumer fireworks; and,
- (c) Is in compliance with any permitting requirements or other regulations of the Berwick Land Use Ordinance.

V. Penalties and Enforcement. In addition to applicable penalties provided by 8 M.R.S. § 223-A, violation of the provisions of this ordinance is a civil violation for which fines will be issued as follows: 1st offense \$50.00, 2nd offense \$100.00, 3rd (and any subsequent) offense \$250.00. For this purpose of this section, each prohibited act shall constitute a separate violation. The Police Department is authorized to enforce this ordinance and may to seize consumer fireworks that are in violation of this ordinance subject to applicable laws. The Town is authorized to seek fines, penalties and fees (including attorney's fees) in accordance with 30-A M.R.S. § 4452 for violation of any permitting requirements and regulations of the Berwick Land Use Ordinance..

VI. Injunction. In addition to any other remedies available at law, the Town of Berwick may seek to enjoin any planned, anticipated, or threatened violation of this Ordinance.

VII. Exemption: Pursuant to 8 M.R.S. § 227-B, nothing in this ordinance shall be construed to limit or regulate fireworks displays, as defined in 8 M.R.S. § 221-A, or the issuance of permits for fireworks displays by the Maine Commissioner of Public Safety or designee.

TOWN OF BERWICK, MAINE
HAZARDOUS WASTE ORDINANCE

The Disposal or storage of hazardous waste as designated under Title 38 M.R.S.A., Section 1301, 1303, A-1 D.E.P. 06-096, Chapter 850 and/or the disposal or storage of radioactive waste material as defined by Title 38 M.R.S.A. (361 A-1-B) within the boundaries of the Town of Berwick, Maine, is prohibited.

Any individual, partnership, company or corporation found in violation of this ordinance shall be subject to a fine of not more than \$495.00 for each offense. Each day in which a violation continues to exist shall constitute a separate offense. The violator shall be responsible for the removal of any hazardous waste.

CERTIFIED BY:

Oscar C. Stone
Robert A. Lee
Samuel S. Mathews
Richard W. Currier
David P. Jones
BOARD OF SELECTMEN/BERWICK, ME.

ATTEST: A true copy of an ordinance
entitled "Town of Berwick,
Maine Hazardous Waste Ordinance",
as certified to me by the Muni-
cipal Officers of Berwick, Me.
on February 19, 1983.

Janet D. Saucier
Janet D. Saucier, Town Clerk

Adopted 3/83

TOWN OF BERWICK

MASS GATHERING ORDINANCE

Section I: Statement of Purpose

The Town of Berwick is concerned about the adverse effect to the general health and safety of the community that may result from large crowds which attend outdoor events, including but not limited to, exhibitions, festivals, music concerts, and fairs. Large gatherings may lead to sanitation problems, resulting for inadequate waste disposal, insufficient drinking water and ill equipped first aid facilities. Such gatherings may also threaten the safety of the community through the obstruction of roads, violation of liquor and drug laws, and destruction of property. Therefore the following ordinance is hereby ordained for the purpose of protecting the general welfare, preventing disease, promoting health and providing for the public safety.

Section II: Requirements of a License for Large Outdoor Events

- A. No person or group may sponsor, promote, operate or hold a festival, exhibition, amusement show, fair, theatrical performance, music concert, parade or other activity which 175 or more people are reasonably expected to attend and in which a substantial portion of the entertainment or the people attending will be out of doors unless a license is first obtained from the Town of Berwick Board of Selectmen.
- B. The licensing procedure will be administered in the following manner:
 - 1. The person or group of persons seeking a license must file an application form with the Town Clerk of the Town of Berwick no less than 45 days before the proposed commencement of the outdoor event.
 - 2. The non-refundable fee for the license shall be \$100.00 and must accompany the application therefore.
 - 3. Before a license is issued the Board of Selectmen shall hold a Public Hearing in order to review the application and determine the conditions required to safeguard the public health, safety and welfare. The Code Enforcement Officer shall prepare and have ready for the public's review the findings after inspecting the site and review of the application. The license applicants have the right to attend and to represent their interests at such hearing. After assessing the possible effects that the proposed event may have on the public's health, safety, and welfare the Board of Selectmen may deny the permit or grant the permit, or grant the permit and impose such reasonable conditions on the issuance of a license which would safeguard the public interest, including requiring the applicant to:
 - a. Post a cooperate bond from a company authorized to do business in Maine, to ensure prompt cleaning of the grounds after the close of the outdoor event, and to ensure prompt payment for all damages by any attendee or employee to public or private property in the vicinity resulting from or in connection with the licensed event. The surety shall be to the benefit of the town and shall allow the town to draw funds if actions are not taken within (3) working days after the event.
 - b. Agree and hire security guards or police at the expense of the licensee. All security guards and/or police must be approved by the Chief of Police. The Chief

of Police shall also determine the number of security guards and or police to be hired.

- c. Agree and hire Firefighters or EMS personnel at the expense of the licensee. All Firefighter & EMS personnel must be approved by the Fire Chief who will determine the type and amount needed for the event. All associated costs for this personnel will be approved by the Fire Chief and paid for by the person or persons seeking the license
- d. Demonstrate, by means of a written descriptive plan, that adequate facilities will be provided at the site of the outdoor event, in order to protect the health of the people who attend, including:
 - 1. Adequate waste disposal facilities;
 - 2. Adequate fire fighting & EMS equipment and personnel;
 - 3. Adequate water supplies;
 - 4. Adequate first aid facilities; and
 - 5. Adequate communication facilities.
 - 6. Adequate security equipment & personnel
- e. Provide notice to the appropriate town official, as named by the Board of Selectmen. In addition all property owners within 500 feet must be notified of the event. This notification is the responsibility of the applicant who shall provide at the Public Hearing a list of the properties contacted.
- f. File proof of authority from landowners whose property will be used in holding the outdoor event.
- g. Demonstrate in a written descriptive plan that adequate parking space will be available. Permission from any property owner whose property will be used for parking must also be included.
- h. All tents and air supported structures shall comply with BOCA Building Code, as provided if adopted or established under existing code relative to Special Use and Occupancy Requirements.
- i. Time limits for the event may be established by the Board of Selectmen after Public Hearing and will be based upon the type of event held, recommendations received and discussions occurring at the Public Hearing.
- j. If required decibel readings for noise based on Article VII Performance Standards 7.6 Noise for Residential, Industrial /Commercial Districts as identified in the Berwick Land Use Ordinance, may occur.

Section III Exemptions

All outdoor events, festivals, music concerts, fairs and other large gatherings sponsored and under the direct supervision of the Town of Berwick, RSU #60 and independent Youth Organizations recognized by the Town of Berwick shall be exempt from the provisions of this ordinance. In addition exempt function will also include Funerals, Outdoor Weddings, Family Reunions All such activities conducted as an auxiliary use to normal operations of a licensed campground shall also be exempt.

Section IV Reminder

If vendors are to use used, contact needs to be made to the Berwick Town Clerks Office to obtain the necessary permits.

Enacted
6/14/94

TOWN OF BERWICK
MESSAGE AND SEXUAL CONTACT
ORDINANCE

Section 1. **Purpose.**

This Ordinance is enacted to regulate the operation and licensing of the business of massage therapy within the Town of Berwick, and to prohibit certain acts performed for compensation, in order to promote the public health and safety and the general welfare.

Section 2. **Power.**

The authority of the Town of Berwick to enact this Ordinance is in accordance with its powers of Home Rule contained in Article VIII, Section 1 of the Maine Constitution.

Section 3. **Definitions.**

For purposes of this Ordinance, the following definitions shall apply unless the context clearly implies otherwise:

- (a) Board: The Board of Selectmen for the Town of Berwick.
- (b) Massage or Massage Therapy: A scientific or skilful manipulation of soft tissue for therapeutic or remedial purposes, specifically for improving muscle tone and circulation and promoting health and physical well being. The term includes, but is not limited to any method of rubbing, kneading, tapping, vibration, compression, percussion, application of friction or manipulation of the external parts of the human body with the hands or other parts of the body or with the aid of any instrument or device.
- (c) Massage establishment: Any business entity engaged in the business of providing or making available massages in the Town of Berwick for consideration, or with the expectation of receiving consideration or any gratuity, whether or not the business has a fixed place of business within the Town limits.
- (d) Massage therapist: Any person who performs massage therapy for consideration or gratuity or with the expectation of receiving consideration or any gratuity.

- (e) Minor: Any person under the age of eighteen (18) years of age.
- (f) Patron: Any person who receives a therapeutic massage.
- (g) Person: Any individual, partnership, corporation or other entity.
- (h) Recognized school: Any school or institution of learning approved or accredited by the American Massage Therapy Association/Commission on Massage Training Accreditation/Approved (AMTA/COMTAA), or a school or institution requiring training equivalent to or surpassing an AMTA/COMTAA-approved school, which offers a course of training in the theory, method, profession and work of massage therapy consisting of five hundred (500) hours or more, the completion of which renders a student eligible for membership in the AMTA. Schools which cannot be verified shall not be deemed a recognized school.

Section 4. Exemptions.

The following persons shall be exempt from this Ordinance while practicing in accordance with the laws of this State: Physicians, physician's assistants, surgeons, osteopaths, nurses, chiropractors, physical therapists, members of the AMTA, barbers, cosmetologists, beauticians and other health and hygiene professionals. Students enrolled in a recognized school who are required to give massages as part of their training shall be exempt from this Article.

Section 5. Prohibited Acts.

- (a) Massage Establishment License. No person shall operate a massage establishment without a valid therapeutic massage establishment license issued by the Board of Selectmen for the Town of Berwick. A separate license shall be required for each such establishment.
- (b) Massage Therapist License. No person shall work as a massage therapist without a valid massage therapist license issued by the Board of Selectmen for the Town of Berwick.
- (c) Other Prohibited Acts.
 - (1) No person within the Town of Berwick acting as a massage therapist, or in any other capacity shall perform

sexual intercourse, commit a sexual act, or make sexual contact as defined in 17 M.R.S.A. Section 251, for pecuniary benefit to himself or herself or a third party.

- (2) No massage therapist shall administer a massage to a client whose genitals are exposed.
- (3) No massage therapist shall administer or agree to administer a massage to the genitals or anus of a client.
- (4) No massage therapist shall administer a massage unless he or she is fully clothed with nontransparent clothing of the type customarily worn by massage therapists while administering a massage.

Section 6. Compliance.

- (a) Any person presently operating as a massage therapist and/or operating a massage establishment in the Town of Berwick on the effective date of this Ordinance, shall comply with the terms of this Ordinance starting on its effective date and shall apply for a license hereunder within thirty (30) days of the effective date of this Ordinance or shall be held in violation.
- (b) Any license issued pursuant to this Ordinance between the effective date hereof and December 31, 1994, shall be valid until December 31, 1995.

Section 7. Application.

Each applicant for a license shall do the following:

- (a) Complete and file an application on a form prescribed by the Board, or if such an application form is not available, on the applicant's own form which contains the required information;
- (b) Along with the application, remit the following license fees in advance with the Board;

Massage Establishment	\$75.00
Massage Therapist	\$50.00

- (c) Submit the completed application to the Board of Selectmen, together with attested copies of

the articles of incorporation and bylaws, if the applicant is a corporation; evidence of partnership, of a partnership; or articles of association and bylaws, if the applicant is an association, as well as a list of all officers and directors;

- (d) File an affidavit which will identify all owners, officers, managers or partners of the applicant and their places of residence at the time of the application and for the immediately preceding three (3) years;
- (e) Submit two (2) front face photographs of the applicant taken within thirty (30) days of the application, not smaller than 2" x 3" nor larger than 3 1/2" x 3 1/2";
- (f) File the release authorized by 16 M.R.S.A. Section 620(6) (Criminal History Record Information Act) with the application of each applicant.

Section 8. Duration of License.

- (a) The license issued pursuant to this Ordinance is on an annual basis and will expire as of December 31st of the calendar year.
- (b) Any application for a renewal of license, which shall contain the same information as the prior application, shall incur a renewal fee of \$25.00 in lieu of the application fee. *#25.00 Est. this amount*
- (c) If an application is denied or withdrawn half of the license fee or renewal fee shall be refunded to the applicant.

Section 9. Investigation of Applicant.

Upon receipt of a completed application, the Board shall cause to be conducted the following investigation:

- (a) The Code Enforcement Officer shall verify that the premises at which the establishment will be located complies with all applicable ordinances of the Town including, but not limited to, the building code, electrical code, plumbing code and zoning ordinance and shall report the findings in writing to the Board of Selectmen;
- (b) If requested by the Codes Enforcement Officer or the Board, the Health Officer shall inspect

the location or proposed location to determine whether the applicable ordinances relating to health and safety have been satisfied and shall report the findings in writing to the Board of Selectmen;

- (c) If requested by the Codes Enforcement Officer or the Board, the Fire Chief or his designee shall verify the premises at which the establishment will be located complies with all applicable fire and safety codes.
- (d) If requested by the Board, a law enforcement officer shall investigate the application including the criminal history record information of the applicant or others, as required under this Ordinance.

Section 10. Basic Proficiency.

Each applicant for a massage therapist license shall be licensed by the State of Maine and shall show proof of basic proficiency in the field of massage therapy which may be satisfied by:

- (a) Evidence of the satisfactory completion of all formal course work and training in massage therapy required for graduation from a recognized school, which shall be in the form of a diploma or certificate of graduation or equivalent documentation; or
- (b) A written statement from a physician, nurse, osteopath, chiropractor, physical therapist, or member of the AMTA stating that that person refers clients to the applicant for therapeutic massage.

Section 11. Standards for Denial.

A license under this Ordinance shall be denied by the Board to the following persons:

- (a) To an applicant who has submitted an incomplete application, knowingly made an incorrect statement of a material nature, or failed to supply additional information required by the Board.
- (b) To an applicant if that person or any owner, officer, manager or partner of the applicant has been convicted of a crime, classified under Title M.R.S.A. Section 17 otherwise known as the Maine Criminal Code, as a class

A, B, or C crime, or any crime involving dishonesty or sexual misconduct, which crime directly relates to the practice of massage therapy, within the two (2) years immediately preceding the date of the application.

Section 12. Grounds for Suspension or Revocation.

(a) All licenses. Any license may be suspended or revoked by the Board of Selectmen upon a determination that the licensee:

- (1) failed to notify the Board of Selectmen of any change in material fact set forth in the application for such license; or
- (2) violated any provision of this Ordinance.

(b) Therapeutic massage establishment license. In addition to the provisions of subsection (a), a massage establishment license may be suspended or revoked by the Board of Selectmen upon a determination that the licensee:

- (1) Permitted any person to perform therapeutic massage without a valid license to do so;
- (2) Permitted or allowed an employee or massage therapist to violate any provision to this Ordinance on the premises of the establishment or in the course of conduct of the business of the establishment; or
- (3) Knowingly permitted any violation of Title 17-A M.R.S.A. Section 851 and 855 on the premises. Such knowledge shall be presumed if there have been two (2) or more convictions for any such offense within any one-year period.

Section 13. Licenses displayed.

A valid therapeutic massage establishment license shall be displayed at all times in an open and conspicuous place in the massage establishment for which it was issued. A valid massage therapist license must be readily available to be produced immediately if demanded of the licensee.

Section 14. Age Restrictions.

No massage or therapeutic massage shall be practiced on a minor without the presence of a parent or legal guardian.

Section 15. Maintenance and cleaning.

Every Person who conducts or operates a therapeutic massage establishment shall keep the same at all times in a clean and sanitary condition. All instruments, supplies and devices of any kind, or parts thereof, that come into contact with the human body shall be kept clean by a modern and approved method of cleaning.

Section 16. Hours of Operation.

No massage establishment shall be kept open for massage purposes between the hours of 10:00 p.m. and 7:00 a.m.

Section 17. Supervision.

At all times when open for business, a therapeutic massage establishment shall have upon the premises a licensed massage therapist who shall be available to supervise the operation of the establishment and assure that no violations of this Ordinance occurs.

Section 18. List of Employees.

The therapeutic massage establishment shall keep a written list of the names and current addresses of all employees, both on duty and off duty. Such list shall be shown to the Board upon request.

Section 19. Violation Penalties.

The violation of any provision of this article shall be punished by a fine of not less than two hundred fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00) for each offense. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. In addition to such penalty, the Town may enjoin or abate any violation of this article by appropriate action, including but not limited to revocation of the license. The Town shall be entitled to recover its costs of any enforcement action, including its attorneys fees.

Section 20. Validity of Ordinance.

If any portion of this Ordinance is held to be invalid or unconstitutional by a Court of competent jurisdiction, then this shall not effect the validity of the remaining provisions of this Ordinance.

ATTEST:

Certified by:

A true copy of an ordinance entitled
"Town of Berwick Massage and ,
Sexual Contact Ordinance"
as certified to me by the Municipal
Officers of Berwick on May 31, 1994

Barbara M. Martin

Barbara M. Martin, Town Clerk

Samuel S. Mathias

Keith L. Bowler

Gerald M. Dick

Wendy A. Wehlt

FLOODPLAIN MANAGEMENT ORDINANCE

FOR THE

TOWN OF BERWICK, MAINE

ENACTED: 11-10-2012
Date

EFFECTIVE: 11-7-2012
Date

CERTIFIED BY: Melissa Albert
Signature

CERTIFIED BY: Melissa Albert
Print Name

Town Clerk
Title

Affix Seal

**EXHIBIT B
FLOODPLAIN MANAGEMENT ORDINANCE**

CONTENTS

ARTICLE	PAGE
I. PURPOSE AND ESTABLISHMENT.....	2
II. PERMIT REQUIRED	2
III. APPLICATION FOR PERMIT	2
IV. APPLICATION FEE AND EXPERT'S FEE.....	4
V. REVIEW STANDARDS FOR FLOOD HAZARD DEVELOPMENT PERMIT APPLICATIONS.....	4
VI. DEVELOPMENT STANDARDS	6
VII. CERTIFICATE OF COMPLIANCE	10
VIII. REVIEW OF SUBDIVISIONS AND DEVELOPMENT PROPOSALS	11
IX. APPEALS AND VARIANCES	11
X. ENFORCEMENT AND PENALTIES	13
XI. VALIDITY AND SEVERABILITY	14
XII. CONFLICT WITH OTHER ORDINANCES	15
XIII. DEFINITIONS	14
XIV. ABROGATION	19

ARTICLE I - PURPOSE AND ESTABLISHMENT

Certain areas of the Town of Berwick, 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 Berwick, 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 Berwick, 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 Berwick 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 Berwick 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 Berwick, Maine.

The areas of special flood hazard, Zones A and AE for the Town of Berwick, York County, Maine, identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study – Town of Berwick, Maine, York County" dated August 5, 1991 with accompanying "Flood Insurance Rate Map - Town of Berwick, Maine, York County," dated August 5, 1991, 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 Code Enforcement Officer. This permit shall be in addition to any other permits which may be required pursuant to the codes and ordinances of the Town of Berwick, 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 - Town of Berwick, 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, FEMA 265/July 1995), 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, 03/09, 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 \$30.00 for all minor development and \$50.00 for all new construction or substantial improvements 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 Code Enforcement Officer, Planning Board 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 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 - Town of Berwick, Maine," as described in Article I;
 2. in special flood hazard areas where base flood elevation and floodway data are not provided, the 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 three feet above the base flood elevation.
2. Zone A shall have the lowest floor (including basement) elevated to at least three feet 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 three feet above the base flood elevation, or together with attendant utility and sanitary facilities shall:
 - a. be floodproofed to at least three feet 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.
4. Zone A shall have the lowest floor (including basement) elevated to at least three feet 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 three feet 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 three feet 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. be 500 square feet or less and have a value less than \$3000;
2. have unfinished interiors and not be used for human habitation;
3. have hydraulic openings, as specified in Article VI.L.2., in at least two different walls of the accessory structure;
4. be located outside the floodway;
5. 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,
6. 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 Zones 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 Chapter 5 entitled "Hydraulic Analyses," *Flood Insurance Study - Guidelines and Specifications for Study Contractors*, (FEMA 37/ January 1995, as amended).
 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 three feet 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 three feet 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 and seaward of mean high tide, 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 Berwick 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 Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer 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.

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 VI.L..

Elevation Certificate - An official form (FEMA Form 81-31, 03/09, 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 (d) Rev. 11/09
Prepared 8/10/12 by MFP/jpp

TOWN OF BERWICK
OBSCENITY ORDINANCE

ARTICLE 1. Purpose.

The purpose of this ordinance is to prohibit any commercial enterprise from presenting or engaging in any obscene exhibitions for profit. It is not intended to suppress or inhibit the free exchange of ideas or artistic expression. The Town Selectmen have recommended this ordinance for the purpose of promoting and protecting the general welfare, public safety, public order, and morals.

ARTICLE 2. Definitions.

Section 1. "Commercial Enterprise" means any business, corporation, association, or natural person established for pecuniary gain other than a theater.

Section 2. "Theater" means:

- a. Any building or hall designed primarily for showing motion pictures, having a permanent movie screen and permanently fixed seats arranged in such fashion as to allow spectators an unobstructed view of this screen.
- b. An open-air theater designed primarily for showing motion pictures, having a permanent movie screen and permanent devices for broadcasting movie sound tracks in motor vehicles.
- c. Any playhouse, hall, or similar structure designed primarily for legitimate artistic expression.

Section 3. "Present" means to show, reveal, display or expose to any person.

Section 4. "Engage In" means to solicit, produce, direct, finance, physically participate in, compensate others for, further the interest of, or be otherwise involved with the proscribed conduct.

Section 5. "Obscene" means any conduct of a sexual nature which:

- a. To the average individual applying contemporary community standards, considered as a whole appeals to the prurient interest.
- b. Presents in a patently offensive manner actual or simulated sexual acts, sodomy, bestiality, excretory functions, masturbation, direct physical stimulation of unclothed genitals, flagellation or torture in context of ultimate sexual acts, lewd exhibition of the human male or female genitals, pubic area, buttocks or the female breast below the top of the nipple.
- c. Considered as a whole lacks serious literary, artistic, political or scientific value.

Section 6. "Exhibition" means any aural, visual, or tactile performance, dramatization, show or display which includes any amount of human, animal, or animated conduct, whether presented live or by way of mechanical reproduction, sound recording, audio-visual cassette or tape, silhouette depiction or by any other means.

ARTICLE 3. Prohibition

Section 1. It shall be unlawful for any commercial enterprise to present for profit any obscene exhibition within the Town of Berwick.

Section 2. It shall be unlawful for any commercial enterprise to engage in any obscene exhibition for profit within the Town of Berwick.

Section 3. It shall be unlawful for any commercial enterprise to solicit, permit, promote, or assist any commercial enterprise or person to present or engage in any obscene exhibition within the Town of Berwick.

ARTICLE 4. Exceptions

This ordinance is not intended to regulate any conduct expressly regulated by existing State Statute.

ARTICLE 5. Penalty

Section 1. Any conduct made unlawful by this ordinance and any violation of this ordinance shall be punishable by a fine of five hundred dollars (\$500.00) for each offense. Each day that such unlawful act or violation continues shall be considered a separate offense.

Section 2. In addition to any other penalty provided by law, the commission of acts prohibited by this ordinance shall constitute a nuisance and may be abated by the Town seeking an injunction to prohibit further and continued violations.

ARTICLE 6. Severability

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

EFFECTIVE DATE: This ordinance will take effect and replace the existing Obscenity Ordinance, upon passage, March 12, 1983.

CERTIFIED BY:

ATTEST: A true copy of an ordinance entitled "Town of Berwick Obscenity Ordinance", as certified to me by the Municipal Officers of Berwick, Maine on Feb. 19, 1983.

Janet D. Saucier
Janet D. Saucier, Town Clerk

James C. Stone
Robert H. We
Samuel S. Mathews
Richard W. Fursie
Daniel P. Sany
BOARD OF SELECTMEN/BERWICK ME.

Adopted 3/83

**BERWICK
PROPERTY ASSESSED CLEAN ENERGY (PACE) ORDINANCE**

Administration by the Efficiency Maine Trust

PROPERTY ASSESSED CLEAN ENERGY (PACE) ORDINANCE.

PREAMBLE

WHEREAS, the 124th 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 City/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

§ XX-1 Purpose

By and through this Chapter, the Town of Berwick 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 Berwick. Berwick declares its purpose and the provisions of this Ordinance to be in conformity with federal and State laws.

§ XX-2 Enabling Legislation

Berwick enacts this Ordinance pursuant to Public Law 2009, Chapter 591 of the 124th 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

§ XX-3 Title

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

§ XX-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 Berwick, Maine
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.

PROPERTY ASSESSED CLEAN ENERGY (PACE) ADMINISTRATION CONTRACT

THIS Property Assessed Clean Energy (PACE) Administration Contract (the "Contract") is entered into this 17th day of May, 2011, by and between the Town of Berwick, a municipal corporation duly organized and existing under the laws of the State of Maine whose mailing address is Box 696 Berwick, Maine 03901 (the "**Municipality**") and the **Efficiency Maine Trust**, a legal entity and instrumentality of and a body corporate and politic under the laws of the State of Maine (the "**Trust**"). The foregoing also are referred to herein collectively as the "**Parties**" or singly as "**Party**."

WHEREAS, the 124th 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 municipality; 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 has adopted a PACE Ordinance; and

WHEREAS, the Parties wish to establish their respective responsibilities in the administration of the PACE Program.

WITNESSETH:

NOW, THEREFORE, for and in consideration of the covenants and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **DEFINITIONS.** Capitalized terms used in this Contract shall have the meanings given them in 35-A M.R.S.A. §10153 unless otherwise specified herein. In addition, these terms are defined as follows:

1.1. **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.

1.2. PACE District. "PACE District" means the area within which the Municipality establishes a PACE Program under this Contract, which is all of that area within the Municipality's boundaries.

1.3. PACE Loan. "PACE Loan" means a loan made to the owner(s) of a Qualifying Property for an Energy Saving Improvement.

2. TRUST'S RESPONSIBILITIES. The Trust shall, itself or through its authorized agents:

2.1. Administration. Administer the functions of a PACE Program which administration shall include, without limitation:

A. the Trust will enter into PACE Agreements with owners of Qualifying Property in the Municipality's PACE District;

B. 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;

C. the Trust, or its agent, will disburse the PACE Loan to the property owner;

D. the Trust, or its agent, will send PACE Assessment statements with payment deadlines to the property owners;

E. the Trust, or its agent, will be responsible for collection of the PACE Assessments;

F. the Trust, or its agent, will record any lien, if needed, due to nonpayment of the PACE Assessment;

G. the Trust or its agent, promptly shall record the discharge of a PACE mortgage upon full payment of the PACE loan;

H. the Trust, or its agent, will be responsible for management of federal grant funds; and

I. the Trust, or its agent, will ensure the collection of data required to quantify carbon savings and to facilitate access to and eligibility for voluntary carbon markets, for federal grants for energy efficiency and for other incentive programs that support Energy Saving Improvements.

2.2. Terms and Conditions. Pursuant to 35-A M.R.S.A. §10154, the Trust may establish terms and conditions under which municipalities and property owners may participate in a PACE Program established there under, and the Parties agree that they, the PACE Program hereunder and this Contract are subject to those terms and conditions as amended from time-to-time.

3. MUNICIPALITY'S RESPONSIBILITIES.

3.1. Education and Outreach Programs. The Municipality agrees to adopt and implement an education and outreach program so that owners of property in the Municipality are made aware of home energy saving opportunities, including the opportunity to finance Energy Saving Improvements with a PACE Loan.

3.2 Conformity with Home Energy Savings Program. The Municipality agrees to conform its PACE Program to the requirements contained in the Home Energy Savings Program.

3.3. Acceptance and Disbursement of Funds. The Municipality agrees to accept PACE funds from the Trust and to disburse PACE funds back to the Trust as needed to satisfy the conditions of the federal grants and to allow the Trust to fund and administer a uniform system of municipal PACE Programs throughout the State.

3.4. Assistance and Cooperation. The Municipality agrees to cooperate with the Trust in the administration of the Municipality's PACE Program, including but not limited to, providing information about applicant properties including property tax payment and lien status, taxable value of residential properties in town, and providing reasonable and necessary aid to the Trust for required data collection, recordkeeping and reporting functions relative to the PACE Program in the PACE District, and providing reasonable and necessary support to the Trust's PACE loan, PACE Assessment, and billing and collection functions.

3.5. Conformity. If standards or rules and regulations are adopted by any State or federal agency subsequent to the Municipality's adoption of a PACE Ordinance or participation in a PACE Program and those standards or rules and regulations substantially conflict with the Municipality's manner of participation in the PACE Program, the Municipality, should it desire to continue its participation in the PACE Program, will be required to take necessary steps to conform its participation to those standards or rules and regulations.

4. TERM.

4.1. This Contract is for a period of three (3) years and shall automatically be renewed for additional periods of three (3) years unless either Party provides the other with ninety (90) days' advance written notice of intent not to renew this Contract.

5. TERMINATION.

5.1. Either Party may terminate this Contract for convenience by providing the other with ninety (90) days' advance written notice of termination. On and after the date of termination, the Municipality no longer will have a PACE Program administered by the Trust except for those PACE Loans already secured by PACE Mortgages as of the date of termination.

6. LIABILITY.

6.1. 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 established under this Contract, including, without limitation, claims for or related to uncollected PACE Assessments.

6.2. Other than the fulfillment of its obligations specified in a PACE Agreement, the Municipality has no liability to a property owner for or related to Energy Saving Improvements financed under a PACE Program.

7. MISCELLANEOUS PROVISIONS

7.1 Notices. All notices, demands or other communications made pursuant to this Contract shall be in writing and shall be sent by (i) registered or certified United States mail, postage prepaid, (ii) by overnight courier, or (iii) by facsimile. Such notice shall be deemed effective upon delivery addressed as follows:

To the Municipality:

Town of Berwick
PO Box 696
Berwick, Maine 03901

To the Trust:

Efficiency Maine Trust
101 Second Street
Hallowell, ME 04347

7.2 Entire Agreement, Modifications. This Contract constitutes the entire agreement of the Parties, and neither Party shall be bound by any statement or representation not contained herein. Except as provided herein, this Contract cannot be changed, amended or modified, except by another agreement in writing signed by all Parties hereto or by their respective successors in interest.

7.3 Headings. The section headings contained herein are for convenience of reference only and are not intended to define, limit, or describe the scope or interest of any provisions of this Contract.

7.4 Severability. If any section, term, covenant, or condition of this Contract or the application thereto to any person or circumstances shall, to any extent be illegal, invalid or unenforceable because of judicial construction, the remaining sections, terms, covenants, and conditions of this Contract, or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each section, term, covenant, or condition of this Contract shall be valid and be enforced to the fullest extent permitted by Law.

7.5 Governing Law, Remedies. This Contract shall be governed by and construed in accordance with the laws of the State of Maine. Except as otherwise agreed by the Parties in writing, all disputes, claims, counterclaims and other matters in question between the

Municipality and the Trust arising out of or relating to this Contract shall be decided by a Maine court of competent jurisdiction.

7.6 Assignment: Successors and Assigns. This Contract may not be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably conditioned, delayed or withheld. This Contract shall benefit and be binding upon the Parties hereto and their respective permitted successors and assigns.

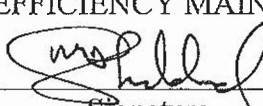
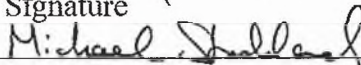
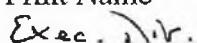
7.7 Non-Waiver. Except as expressly provided in this Contract, the failure or waiver, or successive failures or waivers on the part of either Party hereto, in the enforcement of any paragraph or provision of this Agreement shall not render the same invalid nor impair the right of either Party hereto, its successors or Contract permitted assigns, to enforce the same in the event of any subsequent breach thereof.

IN WITNESS WHEREOF, the Parties hereto have caused this Property Assessed Clean Energy (PACE) Administration Contract, to be executed by their duly authorized representatives as of the date first set forth above.

MUNICIPALITY
By: _____
Signature

Keith M. Trefethen

Its: Town Manager

EFFICIENCY MAINE TRUST
By: _____
Signature

Print Name
Its:  (Title)

BERWICK PERSONNEL APPEALS BOARD ORDINANCE

Section 1. Establishment

This Ordinance is adopted pursuant to the provisions of Maine law (30A MRSA 2691 and 3001).

Section 2. Purpose.

The purpose of this Ordinance is to provide an additional appeals step to an employee who may be suspended without pay or discharged by the Town Manager pursuant to the authority granted the Town Manager by the Town of Berwick Personnel Policy and by Maine law (30A MRSA 2631 et seq.). Under present law, a municipality that adopts the Town Manager Plan of Government adopts all of its provisions which include the sole authority of the Town Manager to hire and to discharge employees either during their probationary period or following completion of it for cause and after notice and hearing. It is advisable to provide an additional appeals step at the local level in order to guarantee an aggrieved employee the opportunity to an appeals hearing process beyond the notice and hearing process provided by the Town Manager. The purpose of this Ordinance is to provide that appeals hearing process to those employees who do not already have a multi-step appeals process provided by either a collective bargaining agreement or by a personal employment agreement.

Section 3. Authority.

In carrying out the duties imposed by this Ordinance, the Berwick Board of Selectmen shall act as the Berwick Personnel Appeals Board when requested to do so.

Section 4. Procedures.

Any Municipal employee of the Town of Berwick who is suspended without pay or who is discharged by the Town Manager pursuant to the authority granted the Town Manager by the Town of Berwick Personnel Policy and by Maine Law and who does not have a further appeal process available to him/her such as under a collective bargaining agreement may appeal this decision to the Board of Selectmen sitting as the Berwick Personnel Appeals Board (hereinafter the "Board"). Such an appeal must be taken within fourteen (14) days of the Town Manager's decision and shall be filed in writing stating the basis for the appeal and the relief requested. The Board shall promptly schedule a hearing date and shall notify both the appellant and the Town Manager of the date, time and place of the hearing.

Section 5. Hearing.

The Board shall sit in executive session pursuant to the provisions of Maine law (1 MRSA 405, 6A) unless the appellant requests a public session in writing as provided for in the law.

The Board shall establish its rules of procedure at the outset of the hearing and shall ensure that both parties have received notice of the hearing and understand the rules to be

followed during it. The Board shall conduct a de novo hearing. It may receive any oral or documentary evidence and may provide for the exclusion of irrelevant, hearsay, immaterial or unduly repetitious evidence during the hearing. The Board may place anyone providing testimony under oath.

At any hearing, a party may be represented by an agent or by an attorney. Once begun, hearings shall only be continued to another time with the concurrence of both parties.

Board Members shall not participate in any ex parte discussion pertaining to the matter being heard prior to, during or following the hearing. Any question as to whether a particular issue involves a conflict of interest sufficient to disqualify a Board Member from participating in the hearing and/or voting on its outcome shall be decided by the remaining Board Members.

A majority vote of those Board Members present and voting is required to decide an appeal hearing. A quorum shall consist of three Board Members. When a bare quorum decides an appeal hearing, a decision by two Board Members shall constitute a majority vote for the purpose of this Ordinance.

Section 6. Decision.

At the conclusion of the hearing and upon its return to public session, the Board shall decide whether to grant the appellant's request or to uphold the action of the Town Manager. In reaching its decision, the Board shall have reviewed the appeal based on the evidence contained in the record created as a result of the hearing. The Board shall reverse the decision of the Town Manager only if it finds that the decision is not supported by substantial evidence in the record and/or is contrary to the provisions of state law or a local ordinance. The Board shall prepare a written decision in each appeal in the form of findings of fact and conclusions of law. Whether the decision becomes public information shall be determined by the "final written decision" provision in Maine law (30A MRSA 2702, B, 5a).

Section 7. Appeal to Court.

An appellant dissatisfied with the decision rendered by the Berwick Personnel Appeals Board may file an appeal with the court pursuant to Rule 80B of the Maine Rules of Civil Procedure.

TOWN OF BERWICK

PINBALL MACHINE ORDINANCE

Section 1. Definitions.

"Mechanical Device". The term "Mechanical Device" shall mean any machine which, upon the insertion of a coin, slug, token, plate or disc, may be operated by the public generally for use as a game, entertainment or amusement, whether or not registering a score, but shall not include juke boxes. It shall include such devices as marble machines, pinball machines, skill ball, mechanical grab machines, and all games, operations and transactions similar thereto under whatever name they may be indicated.

Person, Firm, Corporation, Association. The terms "person", "firm", "corporation", or "association" as used herein shall include the following: Any person, firm, corporation, or association in whose place of business any such machine is placed for use by the public, and the person, firm, corporation or association having control over such machine.

Section 2. Gambling Devices Not PERMITTED. Nothing in this Ordinance shall in any way be construed to authorize or license or permit any gambling devices whatsoever, or any mechanism that has been judicially determined to be a gambling device, or in any way contrary to law.

Section 3. License Required. Any person, firm, corporation or association displaying for public patronage any mechanical amusement device as herein defined by Section 1, shall be required to obtain a license. Application for such license shall be made upon a form to be supplied by the Town Manager for that purpose.

Section 4. Application. The application for such license shall contain the following information:

- a. Name and address of the applicant, age, date and place of birth.
- b. Prior convictions of applicant, if any.
- c. Place where machine or device is to be displayed or operated and the business conducted at that place.
- d. Description of machine, to be covered by the license, mechanical features, name of manufacturer, serial no.

No license shall be issued to any applicant unless he shall be twenty one (21) years of age and a citizen of the United States.

Section 5. Inspection. Application for license shall be made out in duplicate, one copy being referred to the Chief of Police.

- a. The Chief of Police shall investigate the location wherein it is proposed to operate such machine, ascertain if the applicant is a person of good moral character, and report thereon to the Town Manager prior to the ~~assurance~~ ^{issuance} of the license.

b. No license shall be issued by the Town Manager to any applicant until after the Chief of Police has reported his approval or disapproval to the Town Manager.

Section 6. License Fees. Every applicant, before being granted a license, shall pay the following license fee for the privilege of operation or maintaining for operation, a mechanical amusement device as defined in Section 1 herein:

\$5.00 per machine.

Each license shall expire midnight December 31, of the year in which the license is issued.

Section 7. Display of License.

a. The license or licenses herein provided for shall be posted permanently and conspicuously at the location of the machine in the premises wherein the device is to be operated.

b. Such license may be transferred from one machine or device to another similar machine, in the same place of business upon application to the Town Manager to such effect and the giving of a description and the serial number of the new machine or device. Not more than one machine shall be operated under one license and the applicant or licensee shall be required to secure a license for each and every machine displayed or operated by him.

c. If the licensee shall move his place of business to another location within the Town of Berwick, the license may be transferred to such new location upon application to the Town Manager, giving the street and number of the new location. The new location shall be approved by the Chief of Police in the same manner as provided in Section 5.

d. A license shall not be transferrable from person to person, and shall be useable only at the place and by the person designated in the license.

Section 8. False Representations. A minor who falsely represents his age for the purpose of operating such mechanical amusement device as outlined on Section 1 of this Ordinance shall be fined not more than \$20.00. The owner shall have the right to request said minor to exhibit his birth certificate.

Section 9. Prohibitions and Restrictions. No person, firm, corporation or association holding a license under this Ordinance shall permit persons under sixteen (16) years of age to play or operate any mechanical amusement device as defined in Section 1.

Section 10. Revocation of License. Every license issued under this Ordinance is subject to the right, which is hereby expressly reserved to revoke the same should the license, directly or indirectly, permit the operation of any mechanical amusement device contrary to the provisions of this Ordinance, the ordinances of the Town of Berwick or the law of the State of Maine. Said license may be revoked by the Town Manager upon recommendation of the Chief of Police, and after written notice to the licensee, which notice shall specify the ordinance or law violations with which the licensee is charged, if after a hearing the licensee is found to be guilty of such violations. The Board to hear such cases shall consist of the Manager, the Town Clerk and the Chief of Police.

Section 11. Seizure and Destruction of Machine. If the Chief of Police shall have reason to believe any mechanical amusement device is used as a gambling device, such machine may be seized by the Police and impounded and if upon trial of the exhibitor for allowing it to be used as a gambling device, said exhibitor is found guilty, such machine shall be destroyed by the Police.

Section 12. Restriction of Games. No machine shall be operated whereby more than Twenty-five Cents (.25) maximum may be inserted, which would constitute a single game.

Section 13. Penalty. Any person, firm, corporation violating any of the provisions of this Ordinance, in addition to the revocation of his license, shall be liable to a fine or penalty of not less than ten dollars (\$10.00) or more than twenty dollars (\$20.00) for each offense.

Section 14. Separability. It is the intention of the Board of Selectmen that each separate provision of this Ordinance shall be deemed independent of all other provisions herein, and it is further the intention of the Board of Selectmen that if any provision of this Ordinance be declared invalid, all other provisions hereof shall remain valid and enforceable.

Section 15. Effective Date. This Ordinance shall be in full force and effect upon enactment.

CERTIFIED BY:

Eleanor M. Murphy
Richard W. Currier
John J. Prime
Arthur Allaire Jr
Paul L. Hobeys
BOARD OF SELECTMEN/BERWICK, ME.

ATTEST: A true copy of an ordinance entitled "Pinball Machine Ordinance" as certified to me by the Municipal Officers of Berwick, ME., on the twenty-fifth day of February, 1981.

Eileen M. Hooke
Town Clerk

TOWN CLERK'S OFFICE
BERWICK, MAINE
MARCH 30, 1981

This is to certify that at the Annual Meeting, legally called and held on March 14, 1981, at the Berwick Town Hall, the voters of Berwick voted to enact an ordinance entitled "Pinball Machine Ordinance". The effective date of this ordinance was upon enactment. Certifying the above to be true:

ATTEST: Eileen M. Hooke
Eileen M. Hooke
Town Clerk, Berwick, ME

Adopted 3/81

adopted
5/13/2008

TOWN OF BERWICK

PROPERTY TAX ASSISTANCE ORDINANCE

ATTACHMENT E

Section 1. Purpose

The purpose of this Ordinance is to establish a program to provide property tax assistance to persons 70 years of age and over who reside in the Town of Berwick. Under this program, the Town of Berwick will provide supplemental cash refund payments to those individuals who qualify as Berwick resident beneficiaries of the State of Maine Residents Property Tax Program pursuant to Chapter 907 of Title 36 of the Maine Revised Statutes and meet the criteria established by this Ordinance.

Section 2. Definitions

Homestead: A homestead is a dwelling owned or rented by the person seeking tax assistance under this Ordinance or held in a revocable living trust for the benefit of that person. The dwelling must be occupied by that person and that person's dependents as a home.

Qualifying applicant: A qualifying applicant is a person who is determined by the Town Manager, after review of a complete application under Section 4 of this Ordinance, to be eligible for a refund payment under the terms of this Ordinance.

Section 3. Criteria for Participation

In order to participate in the Property Tax Assistance Program, an applicant shall demonstrate all of the following:

- a. The applicant shall be 70 years of age or more at the time of application.
- b. The applicant shall have a homestead in the Town of Berwick at the time of the application and for the entire year prior to the date of application.
- c. The applicant has received a refund under the provisions of Chapter 907 of 36 M.R.S.A.
- d. The applicant has been a resident of the Town of Berwick for at least ten years immediately preceding the date of application for participation in the Program.

Section 4. Application and Payment Procedures

Persons seeking to participate in the Property Tax Assistance Program shall submit a written request to the Town Manager no later than August 15th. Applications are required each year to participate in this program. The Town Manager shall provide an application form for the program, which shall include, at a minimum, the applicant's name, homestead address and contact information. Attached to all applications shall be proof and dollar amount (copy of check) of State Refund under Chapter 907 of Title 36 (State Circuit Breaker Program). The Town Manager shall review and determine if the application is complete and accurate and if the applicant is otherwise eligible to participate in the Program. The Town Manager shall notify an applicant if an application is determined to be incomplete. The Town Manager's decision on eligibility to participate in the Program shall be final.

Section 5. Determination of eligibility and amount of eligibility

If the Town Manager determines that the applicant is eligible to participate in the Program, he shall determine the total amount of such eligibility. Eligibility shall be the lesser of the following amounts:

- a. The amount of the refund awarded by the State under Chapter 907, Title 36 M.R.S.A. (Maine Circuit Breaker Program) or;
- b. Available monies in the Town Circuit Breaker fund or;
- c. \$500.00.

The Town Manager shall report to the Board of Selectmen at their first meeting in October each year the projected payments and number of eligible applicant requesting assistance for the program fund.

Section 6. Program Fund - Limitations upon payments

Payments under this Ordinance shall be conditioned upon the existence of sufficient monies in the Program Fund the year in which participation is sought. If there are not sufficient monies in the Program Fund to pay all qualifying applicants under this Ordinance, payments shall be limited to the amounts available in the Fund. In the event that a lack of funding results in no payment or less than the full payment to a qualifying applicant, the request will not carry over to the next year.

Section 7. Creation of the Program Fund

The Program Fund from which payments shall be made under the terms of this Ordinance shall be created as follows:

As funds are available, the Town of Berwick shall annually appropriate monies from the general fund or other sources to support this program. Any surplus monies available after all payments have been made shall be carried forward within the Fund to the next fiscal year.

Section 8. Timing of Payments

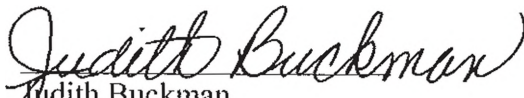
A person who qualifies for payment under this Program shall be mailed a check for the full amount (or pro-rated amount if inadequate funds are available) no later than November 15 for the year in which participation is sought

Section 9. Limitations upon payments

Only one qualifying applicant per household shall be entitled to payment under this Program each year. The right to file an application under this Ordinance is personal to the applicant and does not survive the applicant's death, but the right may be exercised on behalf of an applicant by the applicant's legal guardian or attorney-in-fact. If an applicant dies after having filed a timely complete application that results in a determination of qualification, the amount determined by the Town Manager shall be disbursed to another member of the household as determined by the Town Assessor or the Town Manager. If the applicant was the only member of a household, then no payment shall be made under this Ordinance.

ATTEST:

A true copy of the Town of Berwick Property Tax Assistance Ordinance which was approved at the Annual Town Meeting on May 13, 2008.


Judith Buckman
Town Clerk

RECALL ORDINANCE FOR THE TOWN OF BERWICK, MAINE

SECTION 1. Authority

This Ordinance is enacted pursuant to Title 30-A M.R.S. A. 2602 (6)

SECTION 2. Applicability.

Any elected municipal official of the Town of Berwick may be recalled and removed from office as herein provided for. This Ordinance does not apply to Maine School Administrative District #60 Directors.

SECTION 3. Petitions for Recall.

- a. Recall shall be initiated by petition.
- b. The petition for recall must contain only signatures if the registered voters of the Town of Berwick, equal to ten percent (10%) of the number of votes cast in the Town of Berwick in the last gubernatorial election.
- c. The petition shall be addressed to those members of the Board of selectmen having no interest in the subject matter of the petition; if petitions for the recall of all Selectmen are submitted, then the petitions shall be addressed to the Town Clerk, but the petitions shall, in all cases, be filed with the Town Clerk or Deputy Clerk.
- d. The petition shall state the name and office, or offices, of the municipal official whose removal is being sought, and a general statement of the reasons why such removal is desired.
- e. If recall of more than one municipal official is being sought there shall be a separate petition for each municipal official whose removal is being sought.
- f. Each page of the petition shall provide a space for the voter's signature, address and printed name.
- g. All petition pages thereof shall be filed as one document.

SECTION 4. Clerk's Certification.

Within ten (10) days of receipt of the petition, the Town Clerk, or Deputy Town Clerk in cases where removal of the Town Clerk is sought, shall certify the signatures contained on the petition and shall determine if the petition meets all of the qualifications as set forth in section 3 of this Ordinance. Should the petition be found insufficient, the petition will be filed in the Town Clerks' office and the voter who filed the petition notified.

SECTION 5. Calling the Recall Election

- a. If the petition is certified by the Town Clerk, or Deputy Town Clerk, to be sufficient, he or she will submit the same with his or her certification to the Board of selectmen at their next regular meeting and shall notify the municipal officials whose removal is being sought of such action.

- b. The Selectmen upon receipt of the certified petition, shall within ten (10) days' time of receipt order an election by secret ballot. Pursuant to 30-A MRS 2528, to be held 45 days thereafter, provided that a regular municipal election will not be held within 90 days of receipt of the certified petition, in which case, the selectmen may at their discretion provide for the holding of the recall election on the date of the regular municipal election.
- c. In the event that the Selectmen fail or refuse to order an election as herein provided, the Town Clerk shall call the election to be held 45 days following the Selectmen's failure or refusal to order the required election.
- d. The Selectmen shall schedule such a public hearing on the recall election at least ten (10) days before the date for voting on the recall.

SECTION 6. Ballots for the recall Election.

Unless the municipal official or officials whose removal is being sought have resigned within ten (10) days of receipt of the petition by the Board of Selectmen, the ballots shall be printed and shall read "SHALL _____ BE RECALLED?" with the name of the municipal official whose recall is being sought inserted into the blank space. If the petition seeks the recall of a municipal official from more than one office, each office must be named.

SECTION 7. Result of Election

In the event of an affirmative vote for removal by a majority of those voting thereon, such vote shall take effect as of the recording of the vote tabulation into the records.

SECTION 8. Vacancies to be filled.

Any vacancy resulting from removal from office under this Ordinance shall be filled in accordance with the provisions of Maine Law.

Adopted by the voters the 8th day of November, 2011.

BERWICK RECREATION COMMISSION ORDINANCE

PURPOSE: To Establish a Park and Recreation Commission

SECTION 101 - ESTABLISHMENT

There is hereby established a Park and Recreation Commission in and for the Town of Berwick, to consist of five commissioners and two alternate commissioners. They shall serve without pay and none shall be a salaried official of the Town of Berwick.

SECTION 102 - TERM OF OFFICE

The members of the Commission shall be appointed by the Municipal Officers and shall hold office for three year terms. Upon adoption of this amended Ordinance, the Municipal Officers shall reappoint sitting members for three year terms effective July 1, 1999 in the following manner: one member to serve until December 31, 1999; two members to serve until December 31, 2000; two members to serve until December 31, 2001; and two alternate members to serve until December 31, 1999. After the transition period, appointments shall be made for full three year terms for members and one year terms for alternates or to fill the balance of a term in the case of a vacancy. Members shall continue to serve until their successors are appointed. Members may be removed by the Municipal Officers pursuant to the provisions of any attendance policy adopted by the Municipal Officers.

SECTION 103 - CHAIRMAN AND SECRETARY

103.1 The Commission shall elect a chairperson from among its members who shall serve for one (1) year and until a successor is elected. Any vacancy during the term of said chairperson shall be filled by the Commissioners to serve the unexpired portion of the term. The first Chairperson elected shall serve until December 31, 1999 and until a successor is elected.

103.2 The Commission shall also elect from among its members a secretary whose duties shall be to keep a permanent record of all its meetings and activities and of all orders, resolutions, and recommendations made at such meetings, and such other duties as may be delegated by the Commission including the preparing of an annual report to the Municipality to be published as part of the annual Municipal Report.

103.3 When a member is unable to act because of personal interest, physical incapacity, absence or any other reason satisfactory to the chairperson, the chairperson may designate an associate member to sit in for the absent member.

SECTION 104 - POWERS AND DUTIES

- 104.1 The Commission shall advise the Recreation Director, Town Manager, and Municipal Officers on the care and superintendence of public parks and playgrounds and shall make recommendations on the expenditure of all moneys appropriated for the improvement of the same.
- 104.2 The Commission shall inform and advise the Recreation Director concerning the care, development and superintendence of all public parks, playgrounds, athletic fields, skating rinks and any and all land or buildings used by the Town of Berwick for park or recreational activities other than school buildings and land.
- 104.3 The Commission shall advise the Recreation Director on the merits of conducting any form of recreation or cultural activity that will employ the leisure time of the people in a constructive and wholesome manner.

SECTION 105 - BUDGET AND REPORT

- 105.1 On or before the first day of February of each year, the Commission shall file with the Town Manager, an estimated budget requirement for the ensuing year, and such estimated budget shall contain all the information required by the Town Manager and the Municipal Officers.
- 105.2 On or before the first day of February of each year, the Commission shall file with the Town Manager an updated 5 year Capital Plan.
- 105.3 On or before the first day of March of each year, the Commission shall file with the Town Manager and the Municipal Officers, a complete report covering its activities for the preceding fiscal year or other specified time period.
- 105.4 The deadlines established by this Section may be changed by the Commission with the concurrence of the Municipal Officers.

SECTION 106 - EFFECTIVE DATE

This ordinance shall be effective July 1, 1999 and replaces the Ordinance Adopted March 1988.

adopted
9/19/06
OC:lg

TOWN OF BERWICK
RESTRICTING VEHICLE WEIGHT ON POSTED WAYS

SECTION 1. Purpose of Authority

The purpose of this ordinance is to prevent damage to town ways and bridges in the Town of Berwick 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 Road Commissioner may, either permanently or seasonally, impose such restrictions on the gross registered weight of vehicles as may, in his/her 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. (No restriction if road is solidly frozen, see Note 1 below)

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 travel 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.

Note 1. "Solidly frozen" means that the air temperature is below 32 F and no water is showing in the cracks of the road.

SECTION 4. Exemptions

The following vehicles are exempt from this ordinance:

- (a) any two-axle vehicle while delivering home heating fuel;
- (b) any vehicle while engaged in highway maintenance or repair under the direction of the State or Town;
- (c) any emergency vehicle (such as firefighting apparatus or ambulances) while responding to an emergency;
- (d) any school transportation vehicle while transporting students;
- (e) any public utility vehicle while providing emergency service or repairs; and
- (f) any vehicle whose owner or operator holds a valid permit from the Road Commissioner as provided herein.

SECTION 5. Permits

The owner or operator of any vehicle not otherwise exempt as provided herein may apply in writing to the Road Commissioner for a permit to operate on a posted way or bridge notwithstanding the restriction. The Road Commissioner 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 Town 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 Road Commissioner make the foregoing findings, he/she need not issue a permit if he/she 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. He/She may also limit the number of permits issued or outstanding as may, in his/her judgment, be necessary to preserve and protect the highways.

In determining whether to issue a permit, the Road Commissioner will 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 his/her judgment, be relevant.

The Road Commissioner 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 \$1,000.00. All fines collected shall be returned to the Town. Each violation shall be deemed a separate offense. In addition to any fine, the Town 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 Town 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

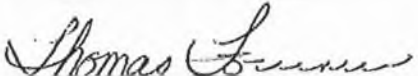
In the event any portion of this ordinance is declared invalid by a court of competent jurisdiction, the remaining portions shall continue in full force and effect.

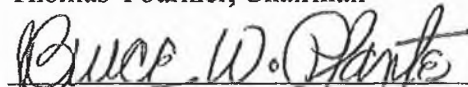
SECTION 10. Effective Date


This ordinance shall take effect immediately upon enactment by the municipal officials at any properly noticed meeting. 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.

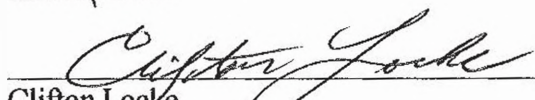
Given under our hands this 19th day of September, 2006

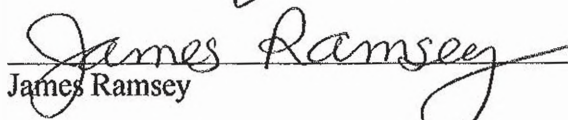
Berwick Board of Selectmen


Thomas Fournier, Chairman


Bruce Plante, Vice Chairman


Marcia Elton


Clifton Locke


James Ramsey

SOLID WASTE/TRANSFER STATION ORDINANCE

Purpose

The purpose of this Ordinance is to provide for the orderly, safe and sanitary disposal of refuse, the recovery of discarded material which can be recycled, and the operation of the Town Transfer Station. This Ordinance provides for permits to be issued to limit disposal to residents and taxpayers and to specially authorized users.

Definitions

Bulky Waste means large items of waste such as appliances, other white/metal goods, furniture and large auto parts.

Business Waste means the waste resulting from the activity of a business situated in Berwick which waste is transported to the Transfer Station or other authorized disposal site by the business itself and not by a Commercial Hauler.

Commercial Hauler means a person or firm which hauls the refuse of another person or firm for a fee or other consideration.

Compactor means transfer station equipment consisting of a large pit hopper into which refuse is deposited and a hydraulic ram which compresses refuse into a special tractor trailer which transports the compacted refuse for further disposal.

Construction & Demolition Waste means the waste of building materials, shingles and the rubble resulting from construction, remodeling, repair and demolition operations on houses, commercial buildings, pavement and other structures from within or without the Town of Berwick.

Domestic Waste means all types of refuse normally generated in a residential household from individual or family uses.

Hazardous Waste means wastes that can cause serious injury or disease during the normal storage, collection, and disposal cycle including, but not limited to, explosives, pathological and infectious wastes, radio active materials and chemical wastes. Hazardous Waste is further described as being flammable (can catch fire easily), reactive (can react or explode), corrosive (can corrode) or toxic (can poison humans, plants, animals and the environment). All state and federal definitions of Hazardous Wastes are herein incorporated by reference.

Person means any individual, partnership, firm, association, corporation, or other legal entity or any agent, representative or employee thereof.

Refuse means putrescible and non-putrescible solid wastes including garbage but excluding body wastes.

Salvageable Waste means refuse that has use or value to a person, firm, corporation or establishment other than those who generated it.

Scavenge means the unauthorized removal of salvageable waste from the refuse disposal area.

Transfer Station means the refuse disposal area located off Route 236 in Berwick or any successor location that may be established in the future.

Yard Waste means grass clippings, leaves, sod, dirt, plants, Christmas trees and tree limbs and brush not more than 6 inches in diameter.

Disposal Prohibited

No person shall dispose of refuse within the Town of Berwick except at the Transfer Station and in accordance with the provisions of this Ordinance and any rules and regulations that may be adopted by the Board of Selectmen pursuant to it.

Permit Required

No person shall dispose of refuse at the Transfer Station unless a disposal permit has first been obtained according to the provisions of this Ordinance. It shall be the responsibility of the applicant for a permit to provide adequate proof of residency or taxpayer status.

Permits

The Town of Berwick shall issue refuse disposal permits and/or use permits. The permits shall be free and shall be issued at the Town Hall or other authorized location. Each resident is entitled to obtain a permit for each vehicle registered in Berwick. Each non-resident real property taxpayer is entitled to obtain a use permit for his/her use while in Berwick. Permits are non-transferrable and may be confiscated or voided if they have been transferred. Resident permits shall be displayed on a windshield on the vehicle to which it was issued. The Board of Selectmen is authorized to make exceptions for leased vehicles, automobile dealer vehicles owned or used by Berwick residents or real property taxpayers, vehicles of military personnel or other vehicle arrangements not contemplated by this Ordinance providing eligibility for a permit is established. Temporary refuse disposal permits may be issued when necessary to meet a temporary need or a situation not addressed in this Ordinance. Construction and Demolition Waste and waste hauled by a Commercial hauler shall not be accepted at the Transfer Station except as otherwise provided for in this ordinance. It must be taken to a licensed disposal site for disposal and the Town shall make arrangements with such a site to ensure acceptance of such waste from Berwick. Applicable charges shall be paid at the licensed disposal site by the user.

Permit Fees & Transfer Station Regulations

The Board of Selectmen is authorized to establish fees for refuse disposal and/or use permits in the future if it is deemed necessary to do so and to establish proportional fees based on the weight or volume of refuse and other categories of waste accepted at the Transfer Station in order to defray the disposal costs of that waste. Prior to instituting or increasing any fees, following the effective date of this Ordinance, the Board of Selectmen shall hold a Public Hearing to receive public comment. The Board of Selectmen is also authorized to adopt other rules and regulations governing the design and term of disposal permits, residency requirements, hours of operation, vehicle standards and any other related matters not inconsistent with the provisions and intent of this Ordinance.

Recycling

The Board of Selectmen is authorized to establish a voluntary recycling program for recyclable items including, but not limited to, entering into a contract for a curbside recycling program and establishing a "swap shop" at the Transfer Station where recyclable items may be deposited and removed.

Materials Accepted at the Transfer Station

A person shall dispose of Domestic Waste, Business Waste, and Bulky Waste at the Transfer Station or by use of a Commercial Hauler who shall dispose of such waste at a licensed disposal site. A person may dispose of Yard Waste at the Transfer Station only during those times of the year when it is being accepted as determined by the Board of Selectmen.

Materials Prohibited at the Transfer Station

A person shall not dispose of any of the following types of refuse:

Refuse from outside of Berwick except recyclable refuse as may be permitted by the Board of Selectmen;

Automobiles or other motor vehicles except that automobile parts such as doors, seats etc. may be accepted.

Construction & Demolition Waste except that the Board of Selectmen may authorize small quantities of such waste to be brought by individual homeowners when doing minor renovations etc. The Board of Selectmen may establish fees for this kind of waste to defray the cost of accepting it;

Hazardous Wastes except that the Board of Selectmen may authorize the collection and disposal of certain special wastes such as motor oil providing all state or federal requirements have been met.

Other Restrictions

A person may not scavenge materials unless a specific area for the recycling and reuse of discarded items has been established by the Board of Selectmen;

A person must transport refuse with appropriate protection against scattering, spillage or leakage and the Town reserves the right to reject loads that scatter, spill or leak;

A person shall not deposit refuse at the Transfer Station except at designated areas or at the direction of Transfer Station personnel.

Enforcement

Police Officers of the Town of Berwick are authorized to enforce the provisions of this Ordinance.

Penalties

Anyone who shall violate any of the provisions of this Ordinance or the rules and regulations promulgated under its authority shall be punished by a fine of not more than One Hundred dollars (\$100) for each violation plus costs which fine shall be recovered on complaint for the use of the Town.

Repeal of Earlier Ordinances

All earlier Ordinances dealing with refuse disposal and solid waste in the Town of Berwick not previously repealed are hereby repealed upon the adoption of this Ordinance.

Effective Date

This Ordinance shall become effective upon its enactment by the voters of the Town of Berwick at a legally called Town Meeting.

TOWN OF BERWICK SPECIAL AMUSEMENT ORDINANCE

I. Purpose. The Purpose of this Ordinance is to control the issuance of special amusement permits as required by state law for music (except radio or other mechanical device), dancing or entertainment in facilities licensed by the state to sell liquor. This Ordinance is enacted pursuant to the provisions of 28-A MRSA 1054 and 30-A MRSA 3001. All existing Town Ordinances or parts thereof that are inconsistent with the terms and provisions of this Ordinance are hereby repealed.

II. Severability. If any section, subsection, sentence or part of this Ordinance is for any reason held to be invalid or unconstitutional, such decision(s) shall not affect the validity of the remaining portions of this Ordinance.

III. Definitions. The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this Section except where the context clearly indicates a different meaning:

Available to the public means that the matter or performance or act may be purchased or attended on a subscription basis; on a membership fee arrangement; for a separate fee for each item, performance or act; or be available merely by being a patron of or present in an establishment licensed to sell liquor.

Disseminate means to transfer possession of, with or without consideration.

Entertainment means any amusement, performance, exhibition or diversion for patrons or customers of the licensed premises whether provided by professional entertainers or by full-time or part-time employees of the licensed premises whose incidental duties include activities with an entertainment value.

Knowingly means being aware of the character and the content of any material or act described in this Ordinance.

Licensee means any person, individual, partnership, firm, association, corporation or other legal entity which is the holder of a license for the sale of liquor to be consumed on premises owned or leased by said licensee or any agent or employee of any such licensee.

Material means any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture or other pictorial representation or any statue or other figure, or any recording, transcription or mechanical or electrical reproduction or any other articles, equipment or machines.

Obscene means that to the average person applying contemporary community standards, the predominant appeal of the matter or act taken as a whole, is to prurient interest, and the matter or act depicts or describes in a patently offensive manner sexual conduct or lewd exhibition of the genitals or other body parts mentioned in this Ordinance, and the matter or act or performance, when considered as a whole, lacks serious literary, artistic, political or scientific value; or any matter, acts or performances which are prohibited by the statutes of the State.

Performance means any preview, play, show, skit, film, dance or other exhibition or entertainment performed before an audience.

Promote means to cause, permit, procure, counsel or assist.

Service to patrons means the provisions of services to customers, patrons or any other persons present in establishments providing food and beverages including, but not limited to, hostessing, hat-checking, cooking, bartending, serving, table setting, table waiting and clearing, and entertainment.

IV. Permit Required. No licensee for the sale of liquor to be consumed on the licensed premises shall permit, on the licensed premises, any music (except radio or other mechanical device), any dancing or entertainment of any sort unless the licensee shall have first obtained from the Town a special amusement permit issued and signed by at least a majority of the Municipal Officers.

V. Permit Application. Applications for all special amusement permits shall be made in writing to the Municipal Officers and shall state:

- (1) The name of the applicant;
- (2) The residence address of the applicant and telephone number to call;
- (3) The name of the business;
- (4) The business address and telephone number of the business;
- (5) The nature of the business;
- (6) The location of the business;
- (7) The applicant's places of residence during the past five years;
- (8) Whether the applicant has ever had a license to conduct the business described in the license either denied or revoked by this or another licensing authority; and, if so, the specific circumstances of such denial or revocation.

- (9) Whether the applicant, including all partners or corporate officers, has ever been convicted of a felony; and, if so, the specific circumstances of such conviction.
- (10) Any additional information as may be required by the Municipal Officers in the issuing of the permit, including, but not limited to a copy of the applicant's current liquor license.

VI. Compliance with law. No permit under this Ordinance shall be issued if the premises and building to be used for the purposes do not fully comply with all Ordinances, Rules or Regulations of the Town.

VII. Admission. A licensed establishment which has been issued a special amusement permit may charge admission in designated areas and/or for designated events if approval to do so is included in the special amusement permit.

VIII. Fee. The fee for a special amusement permit shall be \$100. The Municipal Officers shall have the authority to adjust this fee as they may deem necessary.

IX. Hearing; denial; duration.

(1) Public Hearing. The Municipal Officers shall, prior to granting a permit and after reasonable notice to the public and the applicant, hold a public hearing at which the testimony of the applicant and that of any interested members of the public shall be taken.

(2) Basis for Approval. The Municipal Officers shall grant a permit unless they find that issuance of the permit will be detrimental to the public health, safety or welfare of the residents of the Municipality or would violate any Municipal Ordinance(s), Rules or Regulations.

(3) Duration of permit. The permit shall be valid only for the license year of the applicants' existing liquor license.

X. Suspension or revocation. The Municipal Officers may suspend or revoke a special amusement permit which was issued under this Ordinance if the permit holder is in violation of any provision of this Ordinance or has knowingly made an incorrect statement of a material nature on the application for a permit. Determination of the severity of the violation and whether a suspension or revocation is warranted shall be made by the Municipal Officers following a public hearing preceded by notice to the public and to interested parties. After such a public hearing, the Municipal Officers may suspend or revoke any permits which they have issued under this Ordinance on the grounds that the music, dancing or entertainment permitted constitutes a detriment to the public health, safety or welfare or violates provisions of this or other Municipal Ordinances, Rules or Regulations.

XI. Conduct constituting offenses by licensees.

(1) Tumultuous Conduct. The licensee shall not knowingly allow on any licensed premises any person to disturb, aid in disturbing or disrupt the peace of others of ordinary sensibilities or to be disorderly by violent, tumultuous, offensive or obstreperous conduct; or to permit or gather a crowd, audience or patrons to witness any entertainment, amusement or show as to create a dangerous condition due to fire or other risks in derogation of the public health, comfort, convenience, safety or welfare.

(2) Riots. The licensee shall not allow on any licensed premises any public entertainment or amusement or show of any kind which tends to or is calculated to cause or promote any riot or disturbance.

(3) Unnecessary Noise. The licensee shall not allow on any licensed premises the making, creation or maintenance of excessive, unusually loud noise. (See Land Use Ordinance, Article VII, Section 7.6 as may be amended in the future).

(4) Nuisances. The licensee shall not allow any licensed premises to be so conducted or operated as to amount to a nuisance in fact under any Ordinances, sections of Ordinances, Rules and Regulations of the Town or statutes of the State.

(5) Prostitution and public indecency. The licensee shall not allow on any licensed premises or aid in or offer or agree to or allow in or near such licensed premises any prostitution or prostitutes, or any public indecency under any or in derogation of any statutes of the State, or any meretricious display, lewd act, or act of moral perversion; or knowingly receive or offer to receive any person on such licensed premises for the purpose of performing a lewd act, an act of prostitution or moral perversion, or public indecency; or to knowingly permit any person to remain on such licensed premises for any such purpose; or to aid, abet, allow, permit or participate in the commission of any such acts.

(6) Solicitation of drinks. The licensee shall not allow on any licensed premises any person to frequent or loiter with the purpose of soliciting any other person, customer or patron to purchase any kind of drink.

(7) Gambling. The licensee shall not allow on any licensed premises the use or occupancy of the premises for gambling or for games of chance as prohibited by the statutes of the State

(8) Obscenity.

(a) Prohibited acts. The licensee on any licensed premises shall not:

1. Material. Knowingly disseminate, distribute or make available to the public any obscene material as defined in this Ordinance.

2. Performance. Knowingly make available to the public any obscene performance.

3. Commercial Activity. Knowingly engage in commerce and/or for commercial gain with materials depicting and describing explicit sexual conduct, nudity or excretion, utilizing displays, circulars, advertisements or any other public sales efforts that promote such commerce primarily on the basis of their prurient appeal.

4. Exposure. Provide service to patrons in such a manner as to expose to public view:

a. The licensee's, or any agents or employees of the licensee, genitals, pubic hair, buttocks, perineum, or anal region;

b. Any device, costume or covering which gives the appearance of or simulates the genitals, public hair, buttocks, perineum or anal region; or

c. Any portion of the female breast at or below its areola.

5. Promotion. Knowingly promote the commission of any act listed in this Subsection.

XII. Rules and Regulations.

(1) The Municipal Officers of the Town of Berwick are authorized to establish written Rules and Regulations governing the following providing such Rules and Regulations are consistent with the provisions of this Ordinance:

(a) The issuing, suspension and revocation of Special Amusement Permits;

(b) The classes of any such Permits should there be more than one;

(c) The music, dancing or entertainment permitted under each class;

(d) Other limitations on these activities required to protect the public health, safety and welfare.

(e) The location and size of permitted premises, the facilities that may be required for the permitted activities on those premises and the hours during which the permitted premises may operate.

XIII. Permit issuance or denial. Any licensee applying for a special amusement permit from the Municipal Officers shall be notified in writing of their decision within thirty days of the date the application was received. If a licensee is denied a permit, the licensee shall be provided with written reasons as to why the permit was denied. The licensee may not reapply for a permit within thirty days after an application for a permit has been denied.

XIV. Appeal Procedure. Any licensee who has applied for a permit and has been denied, or whose permit has been suspended or revoked, may within thirty days of the denial, suspension or revocation, appeal the decision to the Berwick Board of Appeals. The Board of Appeals may grant or reinstate the permit if it finds that the permitted activities would not constitute a detriment to the public health, safety or welfare, or that the denial, revocation or suspension was not based by a preponderance of the evidence on a violation of a statute of the State or the provisions of this Ordinance or any Rule or Regulation adopted by the Municipal Officers pursuant to it.

XV. Enforcement. Officers of the Berwick Police Department and the Code Enforcement Officer are authorized enforcement agents of the Town under this Ordinance. The Berwick Fire Chief is authorized to enforce State Life Safety Codes in any licensed premises.

XVI. Penalty. Whoever violates any of the provisions of this Ordinance shall be punished by a fine of not more than \$500 for the first offense and up to \$1,000 for the second and subsequent offenses to be recovered, on complaint, for the use of the Town. Each day shall be considered a separate violation or offense. The Town shall be entitled to be reimbursed for any expenses incurred as a result of any enforcement actions, including reasonable attorney's fees.

XVII. Effective Date. This Ordinance shall be in effect following its approval by the voters of the Town.

Town of Berwick

Where Tradition Meets Tomorrow



Subdivision Regulations

Adopted by Planning Board: December 2, 1999

Amended: November 19, 2009

Adopted by Town Vote: June 12, 2018

11 Sullivan Street
Berwick, Maine

(207) 698-1101

berwickmaine.org

TABLE OF CONTENTS

ARTICLE 1 - PURPOSES	Article 1 Page 1
ARTICLE 2 - AUTHORITY AND ADMINISTRATION	
2.1 Authority	Article 2 Page 1
2.2 Administration	Article 2 Page 1
2.3 Amendments	Article 2 Page 1
ARTICLE 3 - DEFINITIONS	Article 3 Page 1
ARTICLE 4 - ADMINISTRATIVE PROCEDURE	Article 4 Page 1
ARTICLE 5 - PREAPPLICATION MEETING, SKETCH PLAN AND ON-SITE INSPECTION	Article 5 Page 1
5.1 Purpose	Article 5 Page 1
5.2 Procedure	Article 5 Page 1
5.3 Submission	Article 5 Page 1
5.4 Contour Interval and On-Site Inspection	Article 5 Page 1
5.5 Rights Not Vested	Article 5 Page 2
5.6 Establishment of File	Article 5 Page 2
ARTICLE 6 - MINOR SUBDIVISION	Article 6 Page 1
6.1 General	Article 6 Page 1
6.2 Procedure	Article 6 Page 1
6.3 Submissions	Article 6 Page 2
ARTICLE 7 - PRELIMINARY PLAN FOR MAJOR SUBDIVISION	Article 7 Page 1
7.1 Procedure	Article 7 Page 1
7.2 Submissions	Article 7 Page 3
ARTICLE 8 - FINAL PLAN FOR MAJOR SUBDIVISION	Article 8 Page 1
8.1 Procedure	Article 8 Page 1
8.2 Submissions	Article 8 Page 3
8.3 Final Approval and Filing	Article 8 Page 5
ARTICLE 9 - REVISIONS TO APPROVED PLANS	Article 9 Page 1
9.1 Procedure	Article 9 Page 1
9.2 Submissions	Article 9 Page 1
9.3 Scope of Review	Article 9 Page 1
ARTICLE 10 - INSPECTIONS AND ENFORCEMENT	Article 10 Page 1
10.1 Inspection of Required Improvements	Article 10 Page 1
10.2 Violations and Enforcement	Article 10 Page 2
ARTICLE 11 - PERFORMANCE STANDARDS	Article 11 Page 1
11.1 Pollution	Article 11 Page 1

11.2 Sufficient Water-----	Article 11 Page 1
11.3 Impact on Existing Water Supplies-----	Article 11 Page 2
11.4 Soil Erosion-----	Article 11 Page 2
11.5 Traffic Conditions-----	Article 11 Page 2
11.6 Sewage Disposal-----	Article 11 Page 4
11.7 Solid Waste-----	Article 11 Page 5
11.8 Impact on Natural Beauty, Aesthetics, Historic Sites, Wildlife Habitat, Rare Natural Areas or Public Access to the Shoreline---	Article 11 Page 5
11.9 Conformance with Zoning Ordinance and Other Land Use Ordinances-----	Article 11 Page 6
11.10 Financial and Technical Capacity-----	Article 11 Page 7
11.11 Impact on Water Quality or Shoreline-----	Article 11 Page 7
11.12 Impact on Ground Water Quality or Quantity-----	Article 11 Page 7
11.13 Floodplain Management-----	Article 11 Page 8
11.14 Identification of Freshwater Wetlands-----	Article 11 Page 9
11.15 Storm Water Management-----	Article 11 Page 9
11.16 Reservation or Dedication and Maintenance of Open Space and Common Land, Facilities and Services-----	Article 11 Page 9
11.17 Phosphorus Impacts on Great Ponds-----	Article 11 Page 11
ARTICLE 12 - DESIGN GUIDELINES-----	Article 12 Page 1
12.1 Sufficient Water-----	Article 12 Page 1
12.2 Traffic Conditions-----	Article 12 Page 1
12.3 Wildlife Habitat, Rare Natural Areas or Public Access to the Shoreline-----	Article 12 Page 16
12.4 Storm Water Management Design Guidelines-----	Article 12 Page 18
12.5 Impact on Water Quality or Shoreline-----	Article 12 Page 19
12.6 Blocks-----	Article 12 Page 20
12.7 Lots-----	Article 12 Page 20
12.8 Monuments-----	Article 12 Page 21
12.9 Phosphorus Export-----	Article 12 Page 21
ARTICLE 13 - PERFORMANCE GUARANTEES-----	Article 13 Page 1
13.1 Types of Guarantees-----	Article 13 Page 1
13.2 Contents of Guarantee-----	Article 13 Page 1
13.3 Escrow Account-----	Article 13 Page 1
13.4 Performance Bond-----	Article 13 Page 2
13.5 Letter of Credit-----	Article 13 Page 2
13.6 Phasing of Development-----	Article 13 Page 2
13.7 Release of Guarantee-----	Article 13 Page 2
13.8 Default-----	Article 13 Page 2
13.9 Improvements Guaranteed-----	Article 13 Page 2
ARTICLE 14 - WAIVERS-----	Article 14 Page 1
14.1 Waivers Authorized-----	Article 14 Page 1
14.2 Findings of Fact Required-----	Article 14 Page 1
14.3 Conditions-----	Article 14 Page 1

14.4 Waivers to be Shown on Final Plan -----	Article 14 Page 1
ARTICLE 15 - APPEALS -----	Article 15 Page 1
APPENDIX A -----	Appendix A Page 1
Storm Water Runoff Design Criteria -----	Appendix A Page 1
Storm Water Management and Erosion and Sediment Control Best Management Practices (BMPs) -----	Appendix A Page 2

ARTICLE 1 - PURPOSES

The purposes of these regulations are:

- 1.1** To provide for an expeditious and efficient process for the review of proposed subdivisions;
- 1.2** To clarify the approval criteria of the state Subdivision Law, found in Title 30-A M.R.S.A., §4404;
- 1.3** To assure new development in the Town of Berwick meets the goals and conforms to the policies of the Berwick Comprehensive Plan;
- 1.4** To assure the comfort, convenience, safety, health and welfare of the people of the Town of Berwick;
- 1.5** To protect the environment and conserve the natural and cultural resources identified in the Berwick Comprehensive Plan as important to the community;
- 1.6** To assure that a minimal level of services and facilities are available to the residents of new subdivisions and that lots in subdivisions are capable of supporting the proposed uses and structures;
- 1.7** To minimize the potential impacts from new subdivisions on neighboring properties and on the municipality; and
- 1.8** To promote the development of an economically sound and stable community.

ARTICLE 2 - AUTHORITY AND ADMINISTRATION

2.1 Authority.

- A. These standards have been prepared in accordance with the provisions of Title 30-A M.R.S.A., §4403.
- B. These standards shall be known and may be cited as “Subdivision Regulations of the Town of Berwick, Maine.”

2.2 Administration.

- A. The Planning Board of the Town of Berwick, hereinafter called the Board, shall administer these regulations.
- B. The provisions of these regulations shall pertain to all land and buildings proposed for subdivision within the boundaries of the Town of Berwick.

2.3 Amendments.

- A. These regulations may be amended by:
 - 1. The Legislative Body of the Town of Berwick as specified in Title 30-A M.R.S.A., §4403 §§2.
 - 2. The Planning Board if the Legislative Body has not adopted or amended the standards.
- B. A public hearing shall be held prior to the adoption of any amendment. Notice of the hearing shall be provided at least seven days in advance of the hearing.

ARTICLE 3 - DEFINITIONS

In general, words and terms used in these regulations shall have their customary dictionary meanings. More specifically, any word or term defined in the Berwick Land Use Ordinance shall have the definition contained in that ordinance, unless defined differently below; other words and terms used herein are defined as follows:

Affordable Housing: Housing units, which will meet the sales price and/or rental targets established by the comprehensive plan for housing affordability.

Applicant: The person applying for subdivision approval under these regulations.

Average Daily Traffic: The average number of vehicles per day that enter and exit the premises or travel over a specific section of road.

Buffer Area: A part of a property or an entire property, which is not built upon and is specifically intended to separate and thus minimize the effects of a land use activity (e.g. noise, dust, visibility, glare, etc.) on adjacent properties or on sensitive natural resources.

Capital Improvements Program: The municipality's proposed schedule of future projects listed in order of construction priority together with cost estimates and the anticipated means of financing each project.

Certified Soil Scientist: As registered, licensed and/or certified by the appropriate licensing and registration boards in the State of Maine.

Common Open Space: Land within or related to a subdivision, not individually owned or within an individual lot, which is designed and intended for the common use or enjoyment of the residents of the development or the general public. It may include complementary structures and improvements, typically used for maintenance and operation of the open space, such as for outdoor recreation.

Common Scheme of Development: A plan or process of development which 1) takes place on contiguous or non-contiguous parcels or lots in the same immediate vicinity; and 2) exhibits characteristics of a unified approach, method, or effect such as: (a) unified ownership, management, or supervision; (b) sharing of common equipment or labor; or (c) common financing.

Complete Application: An application shall be considered complete upon submission of the required fee and all information required by these regulations, or by a vote by the Board to waive the submission of required information. The Board shall issue a written statement to the applicant upon its determination that an application is complete.

Comprehensive Plan: A document or interrelated documents adopted by the Legislative Body, containing an inventory and analysis of existing conditions, a compilation of goals for the development of the community, an expression of policies for achieving these goals, and a strategy for implementation of the policies.

Conservation Easement: A nonpossessory interest in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational or open space use; protecting natural resources; or maintaining air or water quality.

Density: The number of dwelling units per acre of land.

Developed Area: Any area on which a site improvement or change is made, including buildings, landscaping, parking areas, and streets.

Direct Watershed of a Great Pond: That portion of the watershed which drains directly to the great pond without first passing through an upstream great pond. For the purposes of these regulations, the watershed boundaries shall be as delineated in the comprehensive plan. Due to the scale of the map in the comprehensive plan there may be small inaccuracies in the delineation of the watershed boundary. Where there is a dispute as to exact location of a watershed boundary, the Board or its designee and the applicant shall conduct an on-site investigation to determine where the drainage divide lies. If the Board and the applicant can not agree on the location of the drainage divide based on the on-site investigation, the burden of proof shall lie with the applicant to provide the Board with information from a registered land surveyor showing where the drainage divide lies. The great ponds in the Town of Berwick are Hatfield Lake and Beaver Dam Pond.

Driveway: A vehicular accessway serving two or less dwelling units.

Dwelling: See Land Use Ordinance.

Dwelling Unit: See Land Use Ordinance.

Engineered Subsurface Waste Water Disposal System: A subsurface waste water disposal system designed, installed, and operated as a single unit to treat and dispose of 2,000 gallons of waste water per day or more; or any system designed to be capable of treating waste water with higher BOD₅ and total suspended solids concentrations than domestic waste water.

Final Plan: The final drawings on which the applicant's plan of subdivision is presented to the Board for approval and which, if approved, may be recorded at the Registry of Deeds.

Freshwater Wetland: Areas which are 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; and are not part of a great pond, coastal wetland, river, stream or brook. Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the above criteria.

Great Pond: See Land Use Ordinance.

High Intensity Soil Survey: A map prepared by a Maine Certified Soil Scientist, identifying the soil types down to one-eighth ($\frac{1}{8}$) acre or less at a scale equivalent to the subdivision plan submitted. The soils shall be identified in accordance with the National Cooperative Soil Survey. The map shall show the location of all test pits used to identify the soils, and shall be accompanied by a log of each sample point identifying the textural classification and the depth to seasonal high water table or bedrock at that location. Single soil test pits and their evaluation for suitability for subsurface waste water disposal systems shall not be considered to constitute high intensity soil surveys.

High Water Mark, Inland Waters: 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. In the case of wetlands adjacent to rivers, streams, brooks, or ponds, the normal high-water mark is the upland edge of the wetland, and not the edge of the open water

Homeowners Association: An organization for the purpose of owning, managing and/or maintaining all drainage and erosion control measures constructed in the common areas, in a specified development, and for levying and collecting assessments and other charges against members of said Association.

100-Year Flood: The highest level of flood that, on the average, has a one percent chance of occurring in any given year.

Level of Service: A description of the operating conditions a driver will experience while traveling on a particular street or highway calculated in accordance with the provisions of the *Highway Capacity Manual*, current edition, published by the National Academy of Sciences, Transportation Research Board. There are six levels of service ranging from Level of Service A, with free traffic flow and no delays to Level of Service F, with forced flow and congestion resulting in complete failure of the roadway.

Multifamily Dwelling: See Land Use Ordinance.

Municipal Engineer: Any registered professional engineer hired or retained by the municipality, either as staff or on a consulting basis.

Net Residential Acreage: The total acreage available for the subdivision, as shown on the proposed subdivision plan, minus the area for streets or access and the areas that are unsuitable for development.

Net Residential Density: See Land Use Ordinance.

New Structure or Structures: Includes any structure for which construction begins on or after September 23, 1988. The area included in the expansion of an existing structure is deemed to be a new structure.

Person: Includes a firm, association, organization, partnership, trust, company, or corporation, as well as an individual.

Planning Board: The Planning Board of the Town of Berwick.

Play Area: An area set aside for passive recreation for a particular subdivision owned in common by homeowners in the subdivision.

Preliminary Plan: The preliminary drawings indicating the proposed layout of the subdivision to be submitted to the Planning Board for its consideration.

Professional Engineer: A professional engineer, registered in the State of Maine.

Professional Land Surveyor: As registered, licensed and/or certified by the appropriate licensing and registration boards in the State of Maine.

Public Water System: A water supply system that provides water to at least 15 service connections or services water to at least 25 individuals daily for at least 30 days a year.

Recording Plan: An original of the Final Plan, suitable for recording at the Registry of Deeds and which need show only information relevant to the transfer of an interest in the property, and which does not show other information presented on the plan such as sewer and water line locations and sizes, culverts, and building lines.

Reserved Affordable Housing: Affordable housing which is restricted by means of deed covenants, financing restrictions, or other binding long term methods to occupancy by households making 80% or less of the area median household income.

Sight Distance: The length of an unobstructed view from a particular access point to the farthest visible point of reference on a roadway. Used in these regulations as a reference for unobstructed road visibility.

Sketch Plan: Conceptual maps, renderings, and supportive data describing the project proposed by the applicant for initial review prior to submitting an application for subdivision approval.

Stream: See Land Use Ordinance.

Street: See Land Use Ordinance.

Street Classification:

Arterial Street: A major thoroughfare which serves as a major traffic way for travel between and through the municipality. The following roadways shall be considered arterial streets: Route 9, Route 4, and Route 236.

Collector Street: A street with average daily traffic of 200 vehicles per day or greater, or streets which serve as feeders to arterial streets, and collectors of traffic from minor streets.

Cul-de-sac: A street with only one outlet and having the other end for the reversal of traffic movement.

Minor Residential Street: A street servicing only residential properties and which has an average daily traffic of less than 200 vehicles per day.

Private Right-of-Way: An area or strip of land at least 50 feet in width, described in a deed, and dedicated to the purpose of providing access to a parcel or parcels of land abutting it and indicating responsibility for maintaining said right-of-way. No land in the deeded right-of-way may be used to meet any dimensional requirements of these regulations.

Subdivision: The division of a tract or parcel of land into three or more lots within any five-year period, that begins after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise. The term “subdivision” also includes the division of a new structure or structures on a tract or parcel of land into three or more dwelling units within a five-year period, the construction or placement of three or more dwelling units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into three or more dwelling units within a five-year period.

In determining whether a tract or parcel of land is divided into three or more lots, the first dividing of such tract or parcel shall be considered to create the first two lots and the next dividing of either of the first two lots, by whomever accomplished, unless otherwise exempted herein shall be considered to create a third lot, unless:

- a. Both divisions are accomplished by a subdivider who has retained one of the lots for the subdivider’s own use as a single-family residence that has been the subdivider’s principal residence for a period of at least 5 years immediately preceding the 2nd division; or
- b. The division of the tract or parcel is otherwise exempt under this definition.

A lot of 40 or more acres shall be counted as a lot.

A division accomplished by devise does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this definition.

A division accomplished by condemnation does not create a lot or lots for the purposes of

this definition, unless the intent of the transferor is to avoid the objectives of this definition.

A division accomplished by order of court does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this definition.

A division accomplished by gift to a person related to the donor of an interest in property held by the donor for a continuous period of 5 years prior to the division by gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this definition. If the real estate exempt under this paragraph is transferred within 5 years to another person not related to the donor of the exempt real estate as provided in this paragraph, then the previously exempt division creates a lot or lots for the purposes of this subsection. "Person related to the donor" means spouse, parent, grandparent, brother, sister, child, or grandchild related by blood, marriage, or adoption. A gift under this paragraph cannot be given for consideration that is more than ½ the assessed value of the real estate.

A division accomplished by gift to a municipality if that municipality accepts the gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this definition.

A division accomplished by the transfer of any interest in land to the owners of land abutting that land that does not create a separate lot does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred within 5 years to another person without all of the merged land, then the previously exempt division creates a lot or lots for the purposes of this definition.

The grant of bona fide security interest in an entire lot that has been exempted from the definition under this paragraph, or subsequent transfer of that entire lot by the original holder of the security interest or that person's successor in interest, does not create a lot for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of these regulations.

In determining the number of dwelling units in a structure, the provisions regarding the determination of the number of lots shall apply, including exemptions from the definition of a subdivision of land.

Subdivision, Major: Any subdivision containing more than four lots or dwelling units.

Subdivision, Minor: Any subdivision containing four lots or dwelling units or less.

Substantial Completion: The application of the base layer of pavement as approved by the Town Engineer. If the subdivision is to consist of individual lots to be sold or leased by the subdivider, the cost of construction of buildings on those lots shall not be included. If the subdivision is a multifamily development, or if the applicant proposes to construct the buildings within the subdivision, the cost of building construction shall be included in the total costs of proposed improvements.

Tract or Parcel of Land: All contiguous land in the same ownership, provided that lands 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.

Usable Open Space: That portion of the common open space which due to its slope, drainage characteristics and soil conditions can be used for active recreation, horticulture or agriculture. In order to be considered usable open space, the land must not be poorly drained or very poorly drained, have ledge outcroppings, or areas with slopes exceeding 10%.

ARTICLE 4 - ADMINISTRATIVE PROCEDURE

In order to establish an orderly, equitable and expeditious procedure for reviewing subdivisions and to avoid unnecessary delays in processing applications for subdivision review, the Board shall prepare a written agenda for each regularly scheduled meeting. The agenda shall be prepared no less than one week in advance of the meeting, distributed to the Board members and any applicants appearing on the agenda, and posted at the municipal offices. Applicants shall request to be placed on the Board's agenda at least ten days in advance of a regularly scheduled meeting by contacting the Planning Office.

Applicants who attend a meeting but who are not on the Board's agenda may be heard only after all agenda items have been completed, and then only if a majority of the Board so votes. However, the Board shall take no action on any application not appearing on the Board's written agenda.

ARTICLE 5 - PREAPPLICATION MEETING, SKETCH PLAN AND ON-SITE INSPECTION

5.1 Purpose.

The purpose of the preapplication meeting and on-site inspection is for the applicant to present general information regarding the proposed subdivision to the Board and receive the Board's comments prior to the expenditure of substantial sums of money on surveying, soils identification, and engineering by the applicant.

5.2 Procedure.

- A. The applicant shall present the Preapplication Sketch Plan and make a verbal presentation regarding the site and the proposed subdivision.
- B. Following the applicant's presentation, the Board may ask questions and make suggestions to be incorporated by the applicant into the application.
- C. The date of the on-site inspection is selected.

5.3 Submission.

The Preapplication Sketch Plan shall show in simple sketch form the proposed layout of streets, lots, buildings and other features in relation to existing conditions. The Sketch Plan, which does not have to be engineered and may be a free-hand penciled sketch, should be supplemented with general information to describe or outline the existing conditions of the site and the proposed development. It will be most helpful to both the applicant and the Board for site conditions such as steep slopes, wet areas and vegetative cover to be identified in a general manner. It is recommended that the sketch plan be superimposed on or accompanied by a copy of the assessor's map(s) on which the land is located. The Sketch Plan shall be accompanied by:

- A. A copy of a portion of the U.S.G.S. topographic map of the area showing the outline of the proposed subdivision unless the proposed subdivision is less than ten acres in size.
- B. A copy of that portion of the county soil survey covering the proposed subdivision, showing the outline of the proposed subdivision.
- C. If the project will be connected to the Berwick Sewer District municipal sewer the applicant will submit conceptual plans to the Berwick Sewer District and receive conceptual approval prior to the submittal of the preliminary application to the Town.

5.4 Contour Interval and On-Site Inspection.

Within thirty days of the preapplication meeting, the Board shall hold an on-site inspection of the property and inform the applicant in writing of the required contour interval on the Preliminary Plan, or Final Plan in the case of a Minor Subdivision. The applicant shall place “flagging” at the centerline of any proposed streets, and at the approximate intersections of the street centerlines and lot corners, prior to the on-site inspection. The Board shall not conduct on-site inspections when there is more than one foot of snow on the ground.

5.5 Rights Not Vested.

The preapplication meeting, the submittal or review of the sketch plan or the on-site inspection 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.

5.6 Establishment of File.

Following the preapplication meeting the Board shall establish a file for the proposed subdivision. All correspondence and submissions regarding the preapplication meeting and application shall be maintained in the file.

ARTICLE 6 - MINOR SUBDIVISION

6.1 General.

The Board may require, where it deems necessary to make a determination regarding the criteria for approval from Title 30-A M.R.S.A., §4404, or the performance standards from Article 11 of these regulations, that a Minor Subdivision comply with some or all of the submission requirements for a Major Subdivision.

6.2 Procedure.

A. Within six months after the on-site inspection by the Board, the applicant shall submit an application for approval of a final plan. Applications shall be submitted by mail to the Board in care of the municipal office or delivered by hand to the Code Enforcement and Planning Office. Failure to submit the application within six months shall require resubmission of the Sketch Plan to the Board. The final plan shall approximate the layout shown on the Sketch Plan, plus any recommendations made by the Board.

B. All applications for final plan approval for a Minor Subdivision shall be accompanied by a non-refundable application fee of \$200 plus \$50 per lot or dwelling unit, payable by check to the Town of Berwick or by cash.

In addition, the applicant shall pay a fee of \$50, payable by check to the Town of Berwick or by cash, per lot or dwelling unit to be deposited in a special account designated for that subdivision application, to be used by the Board for hiring independent consulting services and/or legal services to review the application.

In addition to other fees for subdivision reviews, the following fees are hereby established to defray the cost for inspection of all public improvements and the inspection of roads and streets: An amount equal to a minimum of 6% of the estimated costs of construction of streets, sidewalks, drainage, detention ponds, recreation areas, playgrounds, sewer lines, water lines, or other utility or use requiring underground construction. This fee is to be paid by the developer, by check payable to the Town of Berwick or by cash, within 5 business days of the final approval of the subdivision. Any remaining funds plus interest will be refunded to the applicant at the completion of the project.

C. The applicant, or his duly authorized representative, shall submit the final plan to the Code Enforcement and Planning Office.

D. Upon receipt of an application for final plan approval of a minor subdivision the Code Enforcement and Planning Office shall:

1. Issue a dated receipt to the applicant.
2. Notify in writing all owners of abutting property that an application for subdivision approval has been submitted, specifying the location of the proposed subdivision and including a general description of the project.

3. Notify the clerk and the review authority of the neighboring municipalities if any portion of the subdivision abuts or crosses the municipal boundary.
 4. Submit the application to the consulting planner for review for completeness.
- E. Within 30 days of the receipt of the final plan application, the Board or its consulting planner shall determine whether the application is complete and notify the applicant in writing of its determination. If the application is not complete, the Board or its consulting planner shall notify the applicant of the specific additional material needed to complete the application.
- F. Upon a determination that a complete application has been submitted for review, the Board or its consulting planner shall notify the applicant in writing of that determination. At the next regularly scheduled Planning Board meeting, the Board shall determine whether to hold a public hearing on the final plan application.
- G. If the Board decides to hold a public hearing, it shall hold the hearing within 30 days of determining that it has received a complete application, and shall publish a notice of the date, time and place of the hearing in a newspaper of general circulation in the municipality at least two times, the date of the first publication to be at least seven days prior to the hearing. A copy of the notice shall be mailed to the applicant and abutters. If a public hearing is deemed necessary by the Board, all costs incurred in advertising and notifying abutters of a public hearing shall be borne by the applicant.
- H. Within 30 days from the public hearing or within 60 days of determining a complete application has been received, if no hearing is held, or within another time limit as may be otherwise mutually agreed to by the Board and the applicant, the Board shall make findings of fact, and conclusions relative to the criteria contained in Title 30-A M.R.S.A., §4404 and the performance standards of Article 11. If the Board finds that all the criteria of the Statute and the performance standards of Article 11 have been met, they shall approve the final plan. If the Board finds that any of the criteria of the statute or the standards of Article 11 has not been met, the Board shall either deny the application or approve the application with conditions to ensure all of the criteria and standards will be met by the subdivision. The Board shall issue a written notice of its decision to the applicant, including its findings, conclusions and any reasons for denial or conditions of approval.

6.3 Submissions.

The final plan application shall consist of the following items.

- A. Application Form.
- B. Location Map. The location map shall be drawn at a size adequate to show the relationship of the proposed subdivision to the adjacent properties, and to allow the Board to locate the subdivision within the municipality. The location map shall show:

1. Existing subdivisions in the proximity of the proposed subdivision.
 2. Locations and names of existing and proposed streets.
 3. Boundaries and designations of zoning districts.
 4. An outline of the proposed subdivision and any remaining portion of the owner's property if the final plan submitted covers only a portion of the owner's entire contiguous holding.
- C. Final Plan. The subdivision plan for a Minor Subdivision shall consist of two reproducible, stable-based transparencies, one to be recorded at the Registry of Deeds, the other to be filed at the municipal office, and three copies of one or more maps or drawings drawn to a scale of not more than one hundred feet to the inch.

The reproducible transparencies shall be embossed with the dated seal and signature of the individual(s) responsible for preparation of the plan. Plans for subdivisions containing more than one hundred acres may be drawn at a scale of not more than two hundred feet to the inch provided all necessary detail can easily be read.

Plans shall be no larger than 24 by 36 inches in size, and shall have a margin of two inches outside of the border lines on the left side for binding and a one inch margin outside the border along the remaining sides. Space shall be provided for endorsement by the Board. Four copies of all information accompanying the plan shall be submitted.

D. Application Requirements.

The application for approval of a Minor Subdivision shall include the following information. The Board may require additional information to be submitted, where it finds necessary in order to determine whether the criteria of Title 30-A M.R.S.A., §4404 are met.

1. Proposed name of the subdivision, or identifying title, and the name of the municipality in which it is located, plus the assessor's map and lot numbers.
2. Verification of right, title, or interest in the property.
3. A standard boundary survey of the parcel, giving complete descriptive data by bearings and distances, made and certified by a Maine professional land surveyor. The corners of the parcel shall be located on the ground and marked by monuments. The plan shall indicate the type of monument found or to be set at each lot corner.
4. A copy of the most recently recorded deed for the parcel. A copy of all deed restrictions, easements, rights-of-way, or other encumbrances currently affecting the property.

5. A copy of any deed restrictions intended to cover all or part of the lots or dwellings in the subdivision. The deed restrictions must specify that maintenance of privately owned stormwater management facilities will be conducted and certified to the Town in accordance with Article 7.22 of the Town's Land Use Ordinance.
6. An indication of the type of sewage disposal to be used in the subdivision.
 - a. When sewage disposal is to be accomplished by connection to the public sewer the following shall be provided or accomplished:
 1. The Berwick Sewer District shall certify that providing service to the proposed subdivision is within the capacity of the system's existing collection and treatment system or improvements planned to be completed prior to the construction of the subdivision.
 2. The Berwick Sewer District shall review and approve the construction drawings for the sewerage system. The size and location of laterals, collectors, manholes, and pump stations shall be reviewed and approved in writing by the Berwick Sewer District.
 - b. When sewage disposal is to be accomplished by subsurface waste water disposal systems, test pit analyses, prepared by a Maine Licensed Site Evaluator shall be provided. A map showing the location of all test pits dug on the site shall be submitted.
7. An indication of the type of water supply system(s) to be used in the subdivision.
 - a. When water is to be supplied by public water supply, a written statement from the Berwick Water Department shall be submitted indicating that there is adequate supply and pressure for the subdivision and that the department approves the plans for extensions where necessary. Where the department's supply line is to be extended, a written statement from the fire chief, stating approval of the location of fire hydrants, if any, and a written statement from the department approving the design of the extension shall be submitted.
 - b. When water is to be supplied by private wells, evidence of adequate ground water supply and quality shall be submitted by a well driller or a hydrogeologist familiar with the area. Evidence shall also be submitted that adequate fire protection for fire fighting purposes is available to serve the site. If adequate fire protection is not available then a water storage tank or an automatic sprinkling system shall be included in the plan, and a written statement from the Fire Chief shall be submitted indicating the department has reviewed and approved the fire protection system design.
8. The date the plan was prepared, north point, and graphic map scale.

9. The names and addresses of the record owner, applicant, and individual or company who prepared the plan, and adjoining property owners.
10. A high intensity soil survey by a Maine Certified Soil Scientist. Wetland areas shall be identified on the survey, regardless of size.
11. The number of acres within the proposed subdivision, location of property lines, existing buildings, vegetative cover type, and other essential existing physical features. On wooded sites, the plan shall indicate the area where clearing for lawns and structures shall be permitted and/or any restrictions to be placed on clearing existing vegetation.
12. The location of all rivers, streams and brooks within or adjacent to the proposed subdivision. If any portion of the proposed subdivision is located in the direct watershed of a great pond, the application shall indicate which great pond.
13. Contour lines at the interval specified by the Board, showing elevations in relation to mean sea level.
14. The zoning district in which the proposed subdivision is located and the location of any zoning boundaries affecting the subdivision.
15. The location and size of existing and proposed sewers, water mains, culverts, and drainage ways on or adjacent to the property to be subdivided.
16. The location, names, and present widths of existing streets and highways, and existing and proposed easements, building lines, parks and other open spaces on or adjacent to the subdivision. The plan shall contain sufficient data to allow the location, bearing and length of every street line, lot line, and boundary line to be readily determined and be reproduced upon the ground. These lines shall be tied to reference points previously established.
17. Size, type and locations of all existing and proposed overhead and underground utilities, to include but not be limited to street lighting, electricity, telephone, and cable television. The Board may require street lighting if there is a sufficient public safety need in accordance with the Town Street Lighting Policy.
18. The location of any open space to be preserved and a description of proposed improvements and its management.
19. All parcels of land proposed to be dedicated to public use and the conditions of such dedication. Written offers to convey title to the municipality of all public open spaces shown on the plan, and copies of agreements or other documents showing the manner in which open spaces to be retained by the applicant or lot owners are to be maintained shall be submitted. If open space or other land is to be offered to the municipality, written evidence that the municipal officers are satisfied with the legal sufficiency of the written offer to convey title shall be included.

20. If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation, as depicted on the Town of Berwick's Flood Insurance Rate Map, shall be delineated on the plan.
21. A hydrogeologic assessment prepared by a Maine Certified Geologist or Maine Registered Professional Engineer, experienced in hydrogeology, when the subdivision is not served by public sewer and

- a. Any part of the subdivision is located over a sand and gravel aquifer, as shown on a map entitled “Hydrogeologic Data for Significant Sand and Gravel Aquifers,” by the Maine Geological Survey, 1985, Map No. 1; or
- b. The subdivision has an average density of more than one dwelling unit per 100,000 square feet.

The Board may require a hydrogeologic assessment in other cases where site considerations or development design indicate greater potential of adverse impacts on ground water quality. These cases include extensive areas of shallow to bedrock soils; or cluster developments in which the average density is less than one dwelling unit per 100,000 square feet but the density of the developed portion is in excess of one dwelling unit per 80,000 square feet; or proposed use of shared or common subsurface waste water disposal systems.

The hydrogeologic assessment shall be conducted in accordance with the provisions of Section 11.12.A.1 below.

22. An estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours. Trip generation rates used shall be taken from *Trip Generation Manual*, current edition, published by the Institute of Transportation Engineers. Trip generation rates from other sources may be used if the applicant demonstrates that these sources better reflect local conditions.
23. For subdivisions involving 40 or more parking spaces or projected to generate more than 400 vehicle trips per day, a traffic impact analysis, prepared by a Maine Registered Professional Engineer with experience in traffic engineering, shall be submitted. The analysis shall indicate the expected average daily vehicular trips, peak-hour volumes, access conditions at the site, distribution of traffic, types of vehicles expected, effect upon the level of service of the street giving access to the site and neighboring streets which may be affected, and recommended improvements to maintain the desired level of service on the affected streets.
24. A storm water management plan, prepared by a Maine Registered Professional Engineer in accordance with the *Stormwater Management for Maine* manual, published by the Maine Department of Environmental Protection, January 2006. The Board may not waive submission of the storm water management plan unless the subdivision is outside the watershed of a great pond, the proposed subdivision does not involve grading which changes drainage patterns, or does not involve the addition of impervious surfaces such as roofs and driveways less than 5% of the area of the subdivision.

The storm water management plan shall be prepared in accordance with the provisions of Article 11.

25. An erosion and sedimentation control plan prepared in accordance with the manual *Maine Erosion and Sediment Control BMP's* published by the Maine Department of Environmental Protection, March 2003. The Board may not waive submission of the erosion and sedimentation control plan unless the subdivision is outside the watershed of a great pond, the proposed subdivision does not involve grading which changes drainage patterns, or does not involve the addition of impervious surfaces such as roofs and driveways less than 5% of the area of the subdivision.
26. Areas within or adjacent to the proposed subdivision which have been identified as high or moderate value wildlife habitat by the Maine Department of Inland Fisheries and Wildlife or within the comprehensive plan. If any portion of the subdivision is located within an area designated as a critical natural area by the comprehensive plan or the Maine Natural Areas Program the plan shall indicate appropriate measures for the preservation of the values which qualify the site for such designation.
27. If the proposed subdivision is in the direct watershed of a great pond, a phosphorus control plan.
 - a. For subdivisions which qualify for the simplified review procedure as described in Section 11.17.A.2, the plan shall indicate the location and dimensions of vegetative buffer strips or infiltration systems.
 - b. For subdivisions which do not qualify for the simplified review procedure as described in Section 11.17.A.2, the following shall be submitted.
 1. A phosphorus impact analysis and control plan conducted using the procedures set forth in *Volume II – Phosphorus Control in Lake Watersheds: A Technical Guide for Evaluating New Development*, of the *Stormwater Management for Maine* manual dated January 2008, published by the Maine Department of Environmental Protection.
 2. A long-term maintenance plan for all phosphorus control measures.
 3. The contour lines shown on the plan shall be at an interval of no less than five feet.
 4. Areas with sustained slopes greater than 25% covering more than one acre shall be delineated.
28. All areas within or adjacent to the proposed subdivision which are either listed on or eligible to be listed on the National Register of Historic Places, or have been identified in the comprehensive plan as sensitive or likely to contain such sites.
29. The location and method of disposal for land clearing and construction debris.

30. If the owner of the parcel to be subdivided has owned the parcel for less than five years, a narrative describing any timber harvesting operations since the owner obtained the parcel. If harvesting has occurred, a copy of the Forest Operations Notification and a written determination of the harvest's compliance with Maine Forest Service's Timber Harvesting Standards to Substantially Eliminate Liquidation Harvesting certified by a licensed forester shall be submitted.

ARTICLE 7 - PRELIMINARY PLAN FOR MAJOR SUBDIVISION

7.1 Procedure.

- A. Within six months after the on-site inspection by the Board, the applicant shall submit an application for approval of a preliminary plan at least ten days prior to a scheduled meeting of the Board. Applications shall be submitted by mail to the Board in care of the municipal offices or delivered by hand to the municipal offices.

Failure to submit an application within six months may require resubmission of the Sketch Plan to the Board. The preliminary plan shall approximate the layout shown on the Sketch Plan, plus any recommendations made by the Board.

- B. All applications for preliminary plan approval for a Major Subdivision shall be accompanied by an application fee of \$200 plus \$50 per lot or dwelling unit, payable by check to the Town of Berwick or by cash. In addition, the applicant shall pay a fee of \$250 per lot or dwelling unit for subdivisions with ten lots or more, and \$400 per lot for subdivisions with fewer than ten lots, payable by check to the Town of Berwick or by cash, to be deposited in a special account designated for that subdivision application, to be used by the Board for hiring independent consulting services and/or legal services to review the application. If the balance in this special account is drawn down by 75%, the Board shall notify the applicant, and require that an additional \$125 per lot or dwelling unit be deposited by the applicant, payable by check to the Town of Berwick or by cash. The Board shall continue to notify the applicant and require an additional \$125 per lot or dwelling unit be deposited as necessary, payable by check to the Town of Berwick or by cash, whenever the balance of the account is drawn down by 75% of the original deposit. If a public hearing is deemed necessary by the Board, an additional fee shall be required, payable by check to the Town of Berwick or by cash, to cover the costs of advertising. Any balance including any interest in the account remaining after a decision on the final plan application by the Board shall be returned to the applicant.
- C. The applicant, or the applicant's representative, shall attend the meeting of the Board to present the preliminary plan application. Failure to attend the meeting to present the preliminary plan application shall result in a delay of the Board's receipt of the plan until the next meeting that the applicant attends.
- D. Within 30 days of the meeting at which an application for preliminary plan approval of a major subdivision is initially presented, the Code Enforcement and Planning Office shall:
 - 1. Issue a dated receipt to the applicant.

2. Notify in writing all owners of abutting property that an application for subdivision approval has been submitted, specifying the location of the proposed subdivision and including a general description of the project.
 3. Notify the clerk and the review authority of the neighboring municipalities if any portion of the subdivision abuts or crosses the municipal boundary.
- E. Within 30 days of the receipt of the preliminary plan application, the Board or its consulting planner shall determine whether the application is complete and notify the applicant in writing of its determination. If the application is not complete, the Board or its consulting planner shall notify the applicant of the specific additional material needed to complete the application.
 - F. Upon determination that a complete application has been submitted for review, the Board or its consulting planner shall notify the applicant in writing of its determination. The Board shall determine whether to hold a public hearing on the preliminary plan application.
 - G. If the Board decides to hold a public hearing, it shall hold the hearing within 30 days of determining that it has received a complete application, and shall publish a notice of the date, time and place of the hearing in a newspaper of general circulation in the municipality at least two times, the date of the first publication to be at least seven days prior to the hearing. A copy of the notice shall be mailed to the applicant.
 - H. Within 30 days from the public hearing or within 60 days of determining a complete application has been received, if no hearing is held, or within another time limit as may be otherwise mutually agreed to by the Board and the applicant, the Board shall make findings of fact on the application, and approve, approve with conditions, or deny the preliminary plan application. The Board shall specify in writing its findings of facts and reasons for any conditions or denial.
 - I. When granting approval to a preliminary plan, the Board shall state the conditions of such approval, if any, with respect to:
 1. The specific changes which it will require in the final plan;
 2. The character and extent of the required improvements for which waivers may have been requested and which the Board finds may be waived without jeopardy to the public health, safety, and general welfare; and
 3. The construction items for which cost estimates and performance guarantees will be required as prerequisite to the approval of the final plan.

- J. Approval of a preliminary plan shall not constitute approval of the final plan or intent to approve the final plan, but rather it shall be deemed an expression of approval of the design of the preliminary plan as a guide to the preparation of the final plan. The final plan shall be submitted for approval by the Board upon fulfillment of the requirements of these regulations and the conditions of preliminary approval, if any. Prior to the approval of the final plan, the Board may require that additional information be submitted and changes in the plan be made as a result of further study of the proposed subdivision or as a result of new information received.

7.2 Submissions.

The preliminary plan application shall consist of the following items.

- A. Application Form.
- B. Location Map. The location map shall be drawn at a size adequate to show the relationship of the proposed subdivision to the adjacent properties, and to allow the Board to locate the subdivision within the municipality. The location map shall show:
1. Existing subdivisions in the proximity of the proposed subdivision.
 2. Locations and names of existing and proposed streets.
 3. Boundaries and designations of zoning districts.
 4. An outline of the proposed subdivision and any remaining portion of the owner's property if the preliminary plan submitted covers only a portion of the owner's entire contiguous holding.
- C. Preliminary Plan. The preliminary plan shall be submitted in four copies of one or more maps or drawings which may be printed or reproduced on paper, with all dimensions shown in feet or decimals of a foot.

The preliminary plan shall be drawn to a scale of not more than one hundred feet to the inch. Plans for subdivisions containing more than one hundred acres may be drawn at a scale of not more than two hundred feet to the inch provided all necessary detail can easily be read.

- D. Application Requirements.

The application for preliminary plan approval shall include the following information. The Board may require additional information to be submitted, where it finds necessary in order to determine whether the criteria of Title 30-A M.R.S.A., §4404 are met.

1. Proposed name of the subdivision and the name of the municipality in which it is located, plus the assessor's map and lot numbers.

2. Verification of right, title or interest in the property.
3. A standard boundary survey of the parcel, giving complete descriptive data by bearings and distances, made and certified by a Maine registered land surveyor. The corners of the parcel shall be located on the ground and marked by monuments.
4. A copy of the most recently recorded deed for the parcel. A copy of all deed restrictions, easements, rights-of-way, or other encumbrances currently affecting the property.
5. A copy of any deed restrictions intended to cover all or part of the lots or dwellings in the subdivision. The deed restrictions must specify that maintenance of privately owned stormwater management facilities will be conducted and certified to the Town in accordance with Article 7.22 of the Town's Land Use Ordinance.
6. An indication of the type of sewage disposal to be used in the subdivision. When sewage disposal is to be accomplished by connection to the public sewer, the Berwick Sewer District shall certify that providing service to the proposed subdivision is within the capacity of the system's existing collection and treatment system or improvements planned to be completed prior to the construction of the subdivision.

When sewage disposal is to be accomplished by subsurface waste water disposal systems, test pit analyses, prepared by a Maine Licensed Site Evaluator or Maine Certified Soil Scientist shall be provided. A map showing the location of all test pits dug on the site shall be submitted.

7. An indication of the type of water supply system(s) to be used in the subdivision.

When water is to be supplied by public water supply, a written statement from the Berwick Water Department shall be submitted indicating there is adequate supply and pressure for the subdivision.

8. The date the plan was prepared, north point, and graphic map scale.
9. The names and addresses of the record owner, applicant, and individual or company who prepared the plan and adjoining property owners.
10. A high intensity soil survey by a Maine Certified Soil Scientist. Wetland areas shall be identified on the survey, regardless of size.
11. The number of acres within the proposed subdivision, location of property lines, existing buildings, vegetative cover type, and other essential existing physical features
12. The location of all rivers, streams and brooks within or adjacent to the proposed subdivision. If any portion of the proposed subdivision is located in the direct watershed of a great pond, the application shall indicate which great pond.

13. Contour lines at the interval specified by the Board, showing elevations in relation to Mean Sea Level.
14. The zoning district in which the proposed subdivision is located and the location of any zoning boundaries affecting the subdivision.
15. The location and size of existing and proposed sewers, water mains, culverts, and drainage ways on or adjacent to the property to be subdivided.
16. The location, names, and present widths of existing streets, highways, easements, building lines, parks and other open spaces on or adjacent to the subdivision.
17. Size, type and locations of all existing and proposed overhead and underground utilities, to include but not be limited to street lighting, electricity, telephone, and cable television. The Board may require street lighting if there is a sufficient public safety need in accordance with the Town Street Lighting Policy.
18. The proposed lot lines with approximate dimensions and lot areas.
19. All parcels of land proposed to be dedicated to public use and the conditions of such dedication.
20. The location of any open space to be preserved and a description of proposed ownership, improvement and management.
21. The percentage of area on each lot where existing forest cover will be permitted to be removed and converted to lawn, structures or other cover and any proposed restrictions to be placed on clearing existing vegetation.
22. If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation, as depicted on the Town of Berwick's Flood Insurance Rate Map, shall be delineated on the plan.
23. A hydrogeologic assessment prepared by a Maine Certified Geologist or Maine Registered Professional Engineer, experienced in hydrogeology, when the subdivision is not served by public sewer and
 - a. Any part of the subdivision is located over a sand and gravel aquifer, as shown on a map entitled "Hydrogeologic Data for Significant Sand and Gravel Aquifers," by the Maine Geological Survey, 1985, Map No. 1; or
 - b. The subdivision has an average density of more than one dwelling unit per 100,000 square feet.

The Board may require a hydrogeologic assessment in other cases where site considerations or development design indicate greater potential of adverse impacts on ground water quality. These cases include extensive areas of shallow to bedrock soils; or cluster developments in which the average density is less than one dwelling unit per 100,000 square feet but the density of the developed portion is in excess of one dwelling unit per 80,000 square feet; or the proposed use of shared or common subsurface waste water disposal systems.

The hydrogeologic assessment shall be conducted in accordance with the provisions of Section 11.12.A.1 below.

24. An estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours. Trip generation rates used shall be taken from *Trip Generation Manual*, latest edition, published by the Institute of Transportation Engineers. Trip generation rates from other sources may be used if the applicant demonstrates that these sources better reflect local conditions.
25. For subdivisions involving 40 or more parking spaces or projected to generate more than 400 vehicle trips per day, a traffic impact analysis, prepared by a Maine Registered Professional Engineer with experience in traffic engineering, shall be submitted. The analysis shall indicate the expected average daily vehicular trips, peak-hour volumes, access conditions at the site, distribution of traffic, types of vehicles expected, effect upon the level of service of the street giving access to the site and neighboring streets which may be affected, and recommended improvements to maintain the desired level of service on the affected streets.
26. Areas within or adjacent to the proposed subdivision which have been identified as high or moderate value wildlife habitat by the Maine Department of Inland Fisheries and Wildlife or within the comprehensive plan. If any portion of the subdivision is located within an area designated as a unique natural area by the comprehensive plan or the Maine Natural Areas Program the plan shall indicate appropriate measures for the preservation of the values which qualify the site for such designation.
27. If the proposed subdivision is in the direct watershed of a great pond, and qualifies for the simplified review procedure for phosphorus control as described in Section 11.17.A.2, the plan shall indicate the location and dimensions of vegetative buffer strips or infiltration systems and the application shall include a long-term maintenance plan for all phosphorus control measures. For subdivisions which do not qualify for the simplified review procedure, a phosphorus impact analysis and control plan shall be submitted using the procedures set forth in *Volume II – Phosphorus Control in Lake Watersheds: A Technical Guide for Evaluating New Development*, of the *Stormwater Management for Maine* manual dated January 2008, published by the Maine Department of Environmental Protection.

28. All areas within or adjacent to the proposed subdivision which are either listed on or eligible to be listed on the National Register of Historic Places, or have been identified in the comprehensive plan as sensitive or likely to contain such sites.
29. If the owner of the parcel to be subdivided has owned the parcel for less than five years, a narrative describing any timber harvesting operations since the owner obtained the parcel. If harvesting has occurred, a copy of the Forest Operations Notification and a written determination of the harvest's compliance with Maine Forest Service's Timber Harvesting Standards to Substantially Eliminate Liquidation Harvesting certified by a licensed forester shall be submitted.
30. A storm water management plan, prepared by a Maine Registered Professional Engineer in accordance with the *Stormwater Management for Maine* manual, published by the Maine Department of Environmental Protection, January 2006. The Board may not waive submission of the storm water management plan unless the subdivision is outside the watershed of a great pond, the proposed subdivision does not involve grading which changes drainage patterns, or does not involve the addition of impervious surfaces such as roofs and driveways less than 5% of the area of the subdivision.
31. An erosion and sedimentation control plan prepared by a Maine Registered Professional Engineer in accordance with the manual *Maine Erosion and Sediment Control BMP's* published by the Maine Department of Environmental Protection, March 2003. The Board may not waive submission of the erosion and sedimentation control plan unless the subdivision is outside the watershed of a great pond, the proposed subdivision does not involve grading which changes drainage patterns, or does not involve the addition of impervious surfaces such as roofs and driveways less than 5% of the area of the subdivision.
32. A common scheme of development shall be shown for all contiguous or non-contiguous parcels or lots in the same immediate vicinity. The common scheme of development shall include the timing and sequencing of development, types of land uses, anticipated roadways and access locations, number of lots, and open space to be preserved.

ARTICLE 8 - FINAL PLAN FOR MAJOR SUBDIVISION

8.1 Procedure.

- A. Within six months after the approval of the preliminary plan, the applicant shall submit an application for approval of the final plan at least ten days prior to a scheduled meeting of the Board. Applications shall be submitted by mail to the Board in care of the municipal offices or delivered by hand to the Code Enforcement and Planning Office. If the application for the final plan is not submitted within six months after preliminary plan approval, the Board shall require resubmission of the preliminary plan, except as stipulated below. The final plan shall approximate the layout shown on the preliminary plan, plus any changes required by the Board.

If an applicant cannot submit the final plan within six months, due to delays caused by other regulatory bodies, or other reasons, the applicant may request an extension. Such a request for an extension to the filing deadline shall be filed, in writing, with the Board prior to the expiration of the filing period. In considering the request for an extension the Board shall make findings that the applicant has made due progress in preparation of the final plan and in pursuing approval of the plans before other agencies, and that municipal ordinances or regulations which may impact on the proposed development have not been amended.

- B. All applications for final plan approval for a major subdivision shall be accompanied by a nonrefundable application fee of \$250 payable by check to the Town of Berwick. If a public hearing is deemed necessary by the Board, an additional fee shall be required to cover the costs of advertising and postal notification.
- C. Prior to submittal of the final plan application, the following approvals shall be obtained in writing, where applicable:
1. Maine Department of Environmental Protection, under the Site Location of Development Act.
 2. Maine Department of Environmental Protection, under the Natural Resources Protection Act or if a storm water management permit or a waste water discharge license is needed.
 3. Maine Department of Human Services, if the applicant proposes to provide a public water system.
 4. Maine Department of Human Services, if an engineered subsurface waste water disposal system(s) is to be utilized.
 5. U.S. Army Corps of Engineers, if a permit under Section 404 of the Clean Water Act is required.
- D. If the preliminary plan identified any areas listed on or eligible to be listed on the National Register of Historic Places, in accordance with Section 7.2.D.27, the

applicant shall submit a copy of the plan and a copy of any proposed mitigation measures to the Maine Historic Preservation Commission prior to submitting the final plan application.

- E. The applicant, or the applicant's duly authorized representative, shall attend the meeting of the Board to discuss the final plan. Failure to attend the meeting to present the final plan application shall result in a delay of the Board's receipt of the plan until the next meeting which the applicant attends.
- F. At the meeting at which an application for final plan approval of a major subdivision is initially presented, the Board shall issue a dated receipt to the applicant.
- G. Within 30 days of the receipt of the final plan application, the Board shall determine whether the application is complete and notify the applicant in writing of its determination. If the application is not complete, the Board shall notify the applicant of the specific additional material needed to complete the application.
- H. Upon determination that a complete application has been submitted for review, the Board shall issue a dated receipt to the applicant. The Board shall determine whether to hold a public hearing on the final plan application.
- I. If the Board decides to hold a public hearing, it shall hold the hearing within 30 days of determining it has received a complete application, and shall publish a notice of the date, time and place of the hearing in a newspaper of local circulation at least two times, the date of the first publication to be at least seven days before the hearing. In addition, the notice of the hearing shall be posted in at Town Hall.
- J. The Board shall notify the road commissioner, school superintendent, police chief, and fire chief of the proposed subdivision, the number of dwelling units proposed, the length of roadways, and the size and construction characteristics of any multi-family, commercial or industrial buildings. The Board shall request that these officials comment upon the adequacy of their department's existing capital facilities to service the proposed subdivision.
- K. Before the Board grants approval of the final plan, the applicant shall meet the performance guarantee requirements contained in Article 13.
- L. Within 30 days from the public hearing or within 60 days of receiving a complete application, if no hearing is held, or within another time limit as may be otherwise mutually agreed to by the Board and the applicant, the Board shall make findings of fact, and conclusions relative to the criteria for approval contained in Title 30-A M.R.S.A., §4404 and the standards of these regulations.

If the Board finds that all the criteria of the statute and the standards of these regulations have been met, they shall approve the final plan. If the Board finds that any of the criteria of the statute or the standards of these regulations has not been met, the Board shall either deny the application or approve the application with conditions to ensure all of the standards will be met by the subdivision. The reasons for any conditions shall be stated in the records of the Board.

8.2 Submissions.

The final plan shall consist of one or more maps or drawings drawn to a scale of not more than one hundred feet to the inch. Plans for subdivisions containing more than 100 acres may be drawn at a scale of not more than two hundred feet to the inch provided all necessary detail can easily be read. Plans shall be no larger than 24 by 36 inches in size, and shall have a margin of two inches outside of the border line on the left side for binding and a one inch margin outside the border along the remaining sides. Space shall be reserved on the plan for endorsement by the Board. Two reproducible, stable-based transparencies, one to be recorded at the Registry of Deeds, the other to be filed at the municipal office, and three copies of the plan shall be submitted.

The final plan shall include or be accompanied by the following information.

- A. Proposed name of the subdivision and the name of the municipality in which it is located, plus the assessor's map and lot numbers.
- B. The number of acres within the proposed subdivision, location of property lines, existing buildings, watercourses, and other essential existing physical features.
- C. An indication of the type of sewage disposal to be used in the subdivision. When sewage disposal is to be accomplished by connection to the public sewer, a written statement from the Berwick Sewer District indicating the district has reviewed and approved the sewerage design shall be submitted. The Berwick Sewer District shall review and approve the construction drawings for the sewerage system. The size and location of laterals, collectors, manholes, and pump stations shall be reviewed and approved in writing by the Berwick Sewer District
- D. An indication of the type of water supply system(s) to be used in the subdivision.
 - 1. When water is to be supplied by an existing public water supply, a written statement from the Berwick Water Department shall be submitted indicating the department has reviewed and approved the water system design. A written statement shall be submitted from the Fire Chief approving all hydrant locations or other fire protection measures deemed necessary.
 - 2. When water is to be supplied by private wells, evidence of adequate ground water supply and quality shall be submitted by a well driller or a hydrogeologist familiar with the area. Evidence shall also be submitted that adequate fire protection for fire fighting purposes is available to serve the site. If adequate fire protection is not available then a water storage tank shall be included in the plan, and a written statement from the Fire Chief shall be submitted indicating the department has reviewed and approved the fire protection system design.
- E. The date the plan was prepared, north point, graphic map scale.

- F. The names and addresses of the record owner, applicant, and individual or company who prepared the plan.
- G. The location of any zoning boundaries affecting the subdivision.
- H. If different than those submitted with the preliminary plan, a copy of any proposed deed restrictions intended to cover all or part of the lots or dwellings in the subdivision.
- I. The location and size of existing and proposed sewers, water mains, culverts, and drainage ways on or adjacent to the property to be subdivided.
- J. The location, names, and present widths of existing and proposed streets, highways, easements, buildings, parks and other open spaces on or adjacent to the subdivision. The plan shall contain sufficient data to allow the location, bearing and length of every street line, lot line, and boundary line to be readily determined and be reproduced upon the ground. These lines shall be tied to reference points previously established. The location, bearing and length of street lines, lot lines and parcel boundary lines shall be certified by a Maine professional land surveyor. The original reproducible plan shall be embossed with the seal of the professional land surveyor and be signed by that individual.
- K. Street plans, meeting the requirements of Section 12.2.B.2.
- L. All parcels of land proposed to be dedicated to public use and the conditions of such dedication. Written offers to convey title to the municipality of all public ways and open spaces shown on the plan, and copies of agreements or other documents showing the manner in which open spaces to be retained by the developer or lot owners are to be maintained shall be submitted. If proposed streets and/or open spaces or other land is to be offered to the municipality, written evidence that the municipal officers are satisfied with the legal sufficiency of the written offer to convey title shall be included.
- M. The boundaries of any flood hazard areas and the 100-year flood elevation as depicted on the municipality's Flood Insurance Rate Map, shall be delineated on the plan.
- N. If any portion of the proposed subdivision is in the direct watershed of a great pond, and does not qualify for the simplified review procedure for phosphorus control under Section 11.17.A.2, the following shall be submitted or indicated on the plan.
 - 1. A phosphorus impact analysis and control plan conducted using the procedures set forth in *Volume II – Phosphorus Control in Lake Watersheds: A Technical Guide for Evaluating New Development*, of the *Stormwater Management for Maine* manual published by the Maine Department of Environmental Protection, January 2008. The analysis and control plan shall include all worksheets, engineering calculations, and construction specifications and diagrams for control measures, as required by the above-referenced manual.

2. A long-term maintenance plan for all phosphorus control measures.
 3. The contour lines shown on the plan shall be at an interval of no less than five feet.
 4. Areas with sustained slopes greater than 25% covering more than one acre shall be delineated.
- O. A list of construction items, with cost estimates, that will be completed by the applicant prior to the sale of lots, and evidence that the applicant has financial commitments or resources to cover these costs.
- P. The location and method of disposal for land clearing and construction debris.
- Q. Homeowners Association Documents where applicable must be reviewed by the Town's Attorney at the expense of the applicant.

8.3 Final Approval and Filing.

- A. No plan shall be approved by the Board as long as the applicant is in violation of the provisions of a previously approved plan within the municipality.
- B. Upon findings of fact and determination that all standards in Title 30-A M.R.S.A., §4404, and these regulations have been met, and upon voting to approve the subdivision, the Board shall sign the final plan. The Board shall specify in writing its findings of facts and reasons for any conditions or denial. One copy of the signed plan shall be retained by the Board as part of its permanent records. One copy of the signed plan shall be forwarded to the tax assessor. One electronic version of the final plan shall be provided in a format suitable for the Town Mapper. One copy of the signed plan shall be forwarded to the code enforcement officer. Any subdivision not recorded in the Registry of Deeds within 90 days of the date upon which the plan is approved and signed by the Board shall become null and void.
- C. At the time the Board grants final plan approval, it may permit the Plan to be divided into two or more sections subject to any conditions the Board deems necessary in order to ensure the orderly development of the Plan. If any municipal or quasi-municipal department head notified of the proposed subdivision informs the Board that their department or district does not have adequate capital facilities to service the subdivision, the Board shall require the plan to be divided into two or more sections subject to any conditions the Board deems necessary in order to allow the orderly planning, financing and provision of public services to the subdivision. If the superintendent of schools indicates that there is less than 20% excess classroom capacity existing in the school(s) which will serve the subdivision, considering previously approved but not built subdivisions, the Board may require the plan to be divided into sections to prevent classroom overcrowding.
- D. No changes, erasures, modifications, or revisions shall be made in any final plan after approval has been given by the Board and endorsed in writing on the plan,

unless the revised final plan is first submitted and the Board approves any modifications, except in accordance with Article 10. The Board shall make findings that the revised plan meets the criteria of Title 30-A M.R.S.A., §4404, and the standards of these regulations. In the event that a Plan is recorded without complying with this requirement, it shall be considered null and void, and the Board shall institute proceedings to have the plan stricken from the records of the Registry of Deeds.

- E. The approval by the Board of a subdivision plan shall not be deemed to constitute or be evidence of any acceptance by the municipality of any street, 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 municipality, approval of the plan shall not constitute an acceptance by the municipality of such areas. The Board shall require the plan to contain appropriate notes to this effect. The 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.
- F. Failure to achieve substantial completion of a subdivision within 3 years of the date of approval and signing of the plan shall render the plan null and void. Phased subdivisions must complete the first phase within 3 years and each phase thereafter within 3 years of the completion of the previous.
- G. A copy of the as-built plans shall be submitted to the Board and shall be retained by the Board as part of its permanent records.

ARTICLE 9 - REVISIONS TO APPROVED PLANS

9.1 Procedure.

An applicant for a revision to a previously approved plan shall, at least ten days prior to a scheduled meeting of the Board, request to be placed on the Board's agenda. If the revision involves the creation of additional lots or dwelling units, the procedures for preliminary plan approval shall be followed. If the revision involves only modifications of the approved plan, such as moving a lot line, without the creation of additional lots or dwelling units, the procedures for final plan approval shall be followed. The cost related to the Town's review of the revision will be \$100 borne by the applicant.

9.2 Submissions.

The applicant shall submit a copy of the approved plan as well as three copies of the proposed revisions. The application shall also include enough supporting information to allow the Board to make a determination that the proposed revisions meet the standards of these regulations and the criteria of the statute. The revised plan shall indicate that it is the revision of a previously approved and recorded plan and shall show the title of the subdivision and the book and page or cabinet and sheet on which the original plan is recorded at the Registry of Deeds.

9.3 Scope of Review.

The Board's scope of review shall be limited to those portions of the plan which are proposed to be changed.

ARTICLE 10 - INSPECTIONS AND ENFORCEMENT

10.1 Inspection of Required Improvements.

- A. At least five days prior to commencing construction of required improvements, the subdivider or builder shall:
 - 1. Notify the Town Manager and the Planning Office in writing of the time when (s)he proposes to commence construction of such improvements, so that inspections by the Town Engineer can be arranged for, to assure that all municipal specifications, requirements, and conditions of approval are met during the construction of required improvements, and to assure the satisfactory completion of improvements and utilities required by the Board.
 - 2. Deposit with the municipal officers a check for the amount of 6% of the estimated costs of the required improvements to pay for the costs of inspection. If upon satisfactory completion of construction and cleanup there are funds remaining, the surplus shall be refunded to the subdivider or builder as appropriate. If the inspection account shall be drawn down by 90%, the subdivider or builder shall deposit an additional 1% of the estimated costs of the required improvements.
- B. If the inspecting official finds upon inspection of the improvements that any of the required improvements have not been constructed in accordance with the plans and specifications filed by the subdivider, the inspecting official shall so report in writing to the municipal officers, Board, and the subdivider and builder. The municipal officers shall take any steps necessary to assure compliance with the approved plans.
- C. If at any time it appears necessary or desirable to modify the required improvements before or during the construction of 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 section in writing and shall transmit a copy of the approval to the Board. Revised plans shall be filed with the Board. For major modifications, such as relocation of rights-of-way, property boundaries, changes of grade by more than 1%, etc., the subdivider shall obtain permission from the Board to modify the plans in accordance with Article 9.
- D. At the close of each summer construction season the Town may, at the expense of the subdivider, have the site inspected by a qualified individual. By October 1 of each year during which construction was done on the site, the inspector shall submit a report to the Board based on that inspection, addressing whether storm water and erosion control measures (both temporary and permanent) are in place, are properly installed, and appear adequate. The report shall also include a discussion and recommendations on any problems which were encountered.

- E. Prior to the sale of any lot, the subdivider shall provide the Board with a letter from a Registered Land Surveyor, stating that all monumentation shown on the plan has been installed.
- F. Upon completion of street construction and prior to a vote by the municipal officers to submit a proposed public way to a town meeting, a written certification signed by a professional engineer shall be submitted to the municipal officers at the expense of the applicant, certifying that the proposed public way meets or exceeds the design and construction requirements of these regulations. If there are any underground utilities, the servicing utility shall certify in writing that they have been installed in a manner acceptable to the utility. "As built" plans shall be submitted to the municipal officers.
- G. The subdivider shall be required to maintain all improvements and provide for snow removal on streets and sidewalks until acceptance of the improvements by the municipality or control is placed with a lot owners' association. The subdivider shall pay for any street lighting until acceptance of the improvements by the municipality or control is placed with a lot owners' association. The subdivider shall file a performance guarantee with the town upon completion of the public improvements in an amount and form acceptable to the municipal officers assuring that this obligation shall be met. The performance guarantee shall remain in force as long as the subdivider retains this maintenance responsibility.

10.2 Violations and Enforcement.

- A. No plan of a division of land within the municipality which would constitute a subdivision shall be recorded in the Registry of Deeds until a final plan has been approved by the Board in accordance with these regulations.
- B. A person shall not convey, offer or agree to convey any land in a subdivision which has not been approved by the Board and recorded in the Registry of Deeds.
- C. A person shall not sell, lease or otherwise convey any land in an approved subdivision which is not shown on the plan as a separate lot.
- D. No public utility, water district, sanitary district or any utility company of any kind shall serve any lot in a subdivision for which a final plan has not been approved by the Board.
- E. Development of a subdivision without Board approval shall be a violation of law. Development includes grading or construction of roads, grading of land or lots, or construction of buildings which require a plan approved as provided in these regulations and recorded in the Registry of Deeds.
- F. No lot in a subdivision may be sold, leased, or otherwise conveyed before the street upon which the lot fronts is substantially completed in accordance with these regulations up to and including the entire frontage of the lot. No unit in a multi-family development shall be occupied before the street upon which the unit is accessed is completed in accordance with these regulations.

- G. Violations of the above provisions of this section are a nuisance and shall be punished in accordance with the provisions of Title 30-A M.R.S.A., §4452.

ARTICLE 11 - PERFORMANCE STANDARDS

The performance standards in this article are intended to clarify and expand upon the criteria for approval found within the subdivision statute (Title 30-A M.R.S.A., §4404). In reviewing a proposed subdivision, the Board shall review the application for conformance with the following performance standards and make findings that each has been met prior to the approval of a final plan. Compliance with the design guidelines of Article 12 shall be considered to be evidence of meeting the appropriate performance standards. Proposed subdivisions not in compliance with the design guidelines of Article 12 may be considered, but the applicant shall provide clear and convincing evidence that the proposed design will meet the performance standard(s) and the statutory criteria. In all instances the burden of proof shall be upon the applicant to present adequate information to indicate all performance standards and statutory criteria for approval have been or will be met.

11.1 Pollution.

- A. The proposed subdivision shall not discharge waste water to a water body without a license from the Maine Department of Environmental Protection.
- B. Discharges of storm water shall be treated to remove oil, grease, and sediment prior to discharge into surface waterbodies. When the subdivision is within the watershed of a great pond, the storm water shall be treated in order to remove excess nutrients.

11.2 Sufficient Water.

- A. Water Supply.
 - 1. Any subdivision within the area designated for future public water supply service shall make provisions for connection to the public system.
 - 2. When a subdivision is to be served by a public water system, the complete supply system within the subdivision include
 - 3. ng fire hydrants, shall be installed at the expense of the applicant. The size and location of mains, gate valves, hydrants, and service connections shall be reviewed and approved in writing by the Berwick Water Department and the fire chief.
 - 4. When a proposed subdivision is not within the area designated for public water supply service, water supply shall be from individual wells or a private community water system.
 - a. Individual wells shall be sited and constructed to prevent infiltration of surface water, and contamination from subsurface waste water disposal systems and other sources of potential contamination.
 - b. Lot design shall permit placement of wells, subsurface waste water disposal areas, and reserve sites for subsurface waste water disposal areas in compliance with the Maine Subsurface Wastewater Disposal Rules and the Well Drillers and Pump Installers Rules.

- c. If a central water supply system is provided by the applicant, the location and protection of the source, the design, construction and operation of the system shall conform to the standards of the Maine Rules Relating to Drinking Water (10-144A C.M.R. 231).
- d. In areas where the comprehensive plan has identified the need for additional water storage capacity for fire fighting purposes, the applicant shall provide adequate water storage facilities. Facilities may be ponds with dry hydrants, underground storage reservoirs or other methods acceptable to the fire chief. An easement shall be granted to the municipality granting access to and maintenance of dry hydrants or reservoirs where necessary. The Board may waive the requirement for water storage only upon submittal of evidence that the soil types in the subdivision will not permit their construction or installation and that the fire chief has indicated in writing that alternate methods of fire protection are available.

B. Water Quality.

Water supplies shall meet the primary drinking water standards contained in the Maine Rules Relating to Drinking Water. If existing water quality contains contaminants in excess of the secondary drinking water standards in the Maine Rules Relating to Drinking Water, that fact shall be disclosed in a note on the plan to be recorded in the Registry of Deeds.

11.3 Impact on Existing Water Supplies.

In meeting the standards of Section 11.2.A, a proposed subdivision shall not generate a demand on the source, treatment facilities or distribution system of the Berwick Water Department beyond the capacity of those system components, considering improvements that are planned to be in place prior to occupancy of the subdivision. The applicant shall be responsible for paying the costs of system improvements to the department's system as necessary to alleviate existing deficiencies.

11.4 Soil Erosion.

- A. The proposed subdivision shall prevent sediment resulting from soil erosion from entering waterbodies, wetlands, and adjacent properties.
- B. The procedures outlined in the erosion and sedimentation control plan shall be implemented during the site preparation, construction, and clean-up stages.
- C. Topsoil shall be considered part of the subdivision and shall not be removed from the site except for surplus topsoil from roads, parking areas, and building excavations.

11.5 Traffic Conditions.

- A. In general, provision shall be made for vehicular access to the subdivision and circulation within the subdivision in such a manner as to:

1. Safeguard against hazards to traffic and pedestrians in existing streets and within the subdivision;
 2. Avoid traffic congestion on any street; and
 3. Provide safe and convenient circulation on public streets and within the subdivision.
- B. More specifically, access and circulation shall also conform to the following standards.
1. The vehicular access to the subdivision shall be arranged to avoid through traffic use of existing streets which are classified as residential access streets.
 2. The street giving access to the subdivision and neighboring streets and intersections which can be expected to carry traffic generated by the subdivision shall have the capacity or be suitably improved to accommodate that traffic and avoid unreasonable congestion. No subdivision shall reduce the Level of Service (LOS) of the street giving access to the subdivision and neighboring streets and intersections to “E” or below, unless the comprehensive plan has indicated that Levels of Service “E” or “F” are acceptable for that street or intersection.
 3. Where necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, provision shall be made for turning lanes, traffic directional islands, frontage roads, sidewalks, bicycleways and traffic controls within existing public streets.
 4. Accessways to non-residential subdivisions or to multifamily dwellings shall be designed to avoid queuing of entering vehicles on any street. Left lane storage capacity shall be provided to meet anticipated demand. A study or analysis to determine the need for a left-turn storage lane shall be done.
 5. Where topographic and other site conditions allow, provision shall be made for street connections to adjoining lots of similar existing or potential use within areas of the municipality designated as growth areas in the comprehensive plan; or in non-residential subdivisions when such access shall be provided if it will:
 - a. Facilitate fire protection services as approved by the fire chief; or
 - b. Enable the public to travel between two existing or potential uses, generally open to the public, without need to travel upon a public street.
 - 6.. Street Names, Signs and Lighting.

Streets which join and are in alignment with streets of abutting or neighboring properties shall bear the same name. Names of new streets shall not duplicate, nor bear phonetic resemblance to the names of existing streets within the municipality, and shall be subject to the approval of the requirements of the addressing ordinance. No street name shall be the common given name of a person. The developer shall either install street name, traffic safety and control

signs meeting municipal specifications or reimburse the municipality for the costs of their installation. Street lighting shall be installed as approved by the Board.

7. Clean-up.

During street construction, the developer or contractor shall conduct a thorough clean-up of stumps and other debris from the entire street right-of-way. If on-site disposal of the stumps and debris is proposed, the site shall be indicated on the plan, and be suitably covered with fill and topsoil, limed, fertilized, and seeded.

11.6 Sewage Disposal.

A. Public System.

1. Any subdivision located within 2500 feet of a public sanitary sewer line and within the area designated in the comprehensive plan for future public sewage disposal service shall be connected to the Berwick Sewer District.
2. When a subdivision is proposed to be served by the Berwick Sewer District, the complete collection system within the subdivision, including manholes and pump stations, shall be installed at the expense of the applicant.
3. The Berwick Sewer District shall certify that providing service to the proposed subdivision is within the capacity of the system's existing collection and treatment system or improvements planned to be completed prior to the construction of the subdivision.
4. The Berwick Sewer District shall review and approve the construction drawings for the sewerage system. The size and location of laterals, collectors, manholes, and pump stations shall be reviewed and approved in writing by the Berwick Sewer District.

B. Private Systems.

1. When a proposed subdivision is not within the area designated for public sewage disposal service in the comprehensive plan, connection to the public system may not be permitted. Sewage disposal shall be private subsurface waste water disposal systems or a private treatment facility with a licensed surface discharge.
2. The applicant shall submit evidence of site suitability for subsurface sewage disposal prepared by a Maine Licensed Site Evaluator in full compliance with the requirements of the State of Maine Subsurface Wastewater Disposal Rules.
 - a. The site evaluator shall certify in writing that all test pits which meet the requirements for a new system represent an area large enough for a disposal area on soils which meet the Disposal Rules.

- b. On lots in which the limiting factor has been identified as being within 24 inches of the surface, a second site with suitable soils shall be shown as a reserve area for future replacement of the disposal area. The reserve area shall be shown on the plan and restricted so as not to be built upon.
- c. In no instance shall a disposal area be on a site which requires a New System Variance from the Subsurface Wastewater Disposal Rules.

11.7 Solid Waste.

The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste.

11.8 Impact on Natural Beauty, Aesthetics, Historic Sites, Wildlife Habitat, Rare Natural Areas or Public Access to the Shoreline.

A. Preservation of Natural Beauty and Aesthetics.

- 1. The plan shall, by notes on the final plan and deed restrictions, limit the clearing of trees to those areas designated on the plan.
- 2. Except in areas of the municipality designated by the comprehensive plan as growth areas, the subdivision shall be designed to minimize the visibility of buildings from existing public roads.
- 3. The Board may require the application to include a landscape plan that will show the preservation of any existing trees larger than 24 inches diameter breast height, the replacement of trees and vegetation, and graded contours.
- 4. When a proposed subdivision street traverses open fields the plans shall include the planting of street trees.

B. Retention of Open Spaces and Natural or Historic Features.

- 1. If any portion of the subdivision is located within an area designated by the comprehensive plan as open space or greenbelt, that portion shall be reserved for open space preservation.
- 2. If any portion of the subdivision is located within an area designated as a unique natural area by the comprehensive plan or the Maine Natural Areas Program the plan shall indicate appropriate measures for the preservation of the values which qualify the site for such designation.
- 3. If any portion of the subdivision is designated a site of historic or prehistoric importance by the comprehensive plan or the Maine Historic Preservation Commission, appropriate measures for the protection of the historic or prehistoric resources shall be included in the plan.
- 4. The subdivision shall reserve sufficient undeveloped land to provide for the recreational needs of the occupants. The percentage of open space to be reserved shall depend on the identified needs for outdoor recreation in the portion of the municipality in which the subdivision is located according to the

comprehensive plan, the proposed lot sizes within the subdivision, the expected demographic makeup of the occupants of the subdivision, and the site characteristics.

5. Land reserved for open space purposes shall be of a character, configuration and location suitable for the particular use intended.
6. Reserved open space land may be dedicated to the municipality.

C. Protection of Significant Wildlife Habitat.

If any portion of a proposed subdivision lies within:

1. 250 feet of the following areas identified and mapped by the Department of Inland Fisheries and Wildlife or the comprehensive plan as:
 - a. Habitat for species appearing on the official state or federal lists of endangered or threatened species;
 - b. High and moderate value waterfowl and wading bird habitats, including nesting and feeding areas;
 - c. Shorebird nesting, feeding and staging areas and seabird nesting islands;
 - d. Critical spawning and nursery areas for Atlantic sea run salmon as defined by the Atlantic Sea Run Salmon Commission; or
2. 1,320 feet of an area identified and mapped by the Department of Inland Fisheries and Wildlife as a high or moderate value deer wintering area or travel corridor;
3. Or other important habitat areas identified in the comprehensive plan, the applicant shall demonstrate that there shall be no adverse impacts on the habitat and species it supports. A report prepared by a wildlife biologist certified by the Wildlife Society with demonstrated experience with the wildlife resource being impacted shall be submitted. This report shall assess the potential impact of the subdivision on the significant habitat and adjacent areas that are important to the maintenance of the affected species and shall describe appropriate mitigation measures to ensure that the subdivision will have no adverse impacts on the habitat and the species it supports.

- D. Any existing public rights of access to the shoreline of a water body shall be maintained by means of easements or rights-of-way, or should be included in the open space with provisions made for continued public access.

11.9 Conformance with Zoning Ordinance and Other Land Use Ordinances.

All lots shall meet the minimum dimensional requirements of the zoning ordinance for the zoning district in which they are located. The proposed subdivision shall meet all applicable performance standards or design criteria from the zoning ordinance.

11.10 Financial and Technical Capacity.

A. Financial Capacity.

The applicant shall have adequate financial resources to construct the proposed improvements and meet the criteria of the statute and the standards of these regulations. When the applicant proposes to construct the buildings as well as the subdivision improvements, the applicant shall have adequate financial resources to construct the total development. In making the above determinations the Board shall consider the proposed time frame for construction and the effects of inflation.

B. Technical Ability.

1. The applicant shall retain qualified contractors and consultants to supervise, construct and inspect the required improvements in the proposed subdivision.
2. In determining the applicant's technical ability the Board shall consider the applicant's previous experience, the experience and training of the applicant's consultants and contractors, and the existence of violations of previous approvals granted to the applicant.

11.11 Impact on Water Quality or Shoreline.

Cutting or removal of vegetation along waterbodies shall not increase water temperature, result in shoreline erosion or sedimentation of waterbodies.

11.12 Impact on Ground Water Quality or Quantity.

A. Ground Water Quality.

1. When a hydrogeologic assessment is submitted, the assessment shall contain at least the following information:
 - a. A map showing the basic soils types.
 - b. The depth to the water table at representative points throughout the subdivision.
 - c. Drainage conditions throughout the subdivision.
 - d. Data on the existing ground water quality, either from test wells in the subdivision or from existing wells on neighboring properties.
 - e. An analysis and evaluation of the effect of the subdivision on ground water resources. In the case of residential developments, the evaluation shall, at a minimum, include a projection of post development nitrate-nitrogen concentrations at any wells within the subdivision, or at the subdivision boundaries; or at a distance of 1,000 feet from potential contamination sources, whichever is a shortest distance.

- f. A map showing the location of any subsurface waste water disposal systems and drinking water wells within the subdivision and within 200 feet of the subdivision boundaries.
2. Projections of ground water quality shall be based on the assumption of drought conditions (assuming 60% of annual average precipitation).
 3. No subdivision shall increase any contaminant concentration in the ground water to more than one half of the Primary Drinking Water Standards. No subdivision shall increase any contaminant concentration in the ground water to more than the Secondary Drinking Water Standards.
 4. If ground water contains contaminants in excess of the primary standards, and the subdivision is to be served by on-site ground water supplies, the applicant shall demonstrate how water quality will be improved or treated.
 5. If ground water contains contaminants in excess of the secondary standards, the subdivision shall not cause the concentration of the parameters in question to exceed 150% of the ambient concentration.
 6. 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 or other measures to reduce ground water contamination and protect drinking water supplies are recommended in the assessment, those standards shall be included as a note on the final plan, and as restrictions in the deeds to the affected lots.
- B. Ground Water Quantity.
1. Ground water withdrawals by a proposed subdivision shall not lower the water table beyond the boundaries of the subdivision.
 2. A proposed subdivision shall not result in a lowering of the water table at the subdivision boundary by increasing runoff with a corresponding decrease in infiltration of precipitation.

11.13 Floodplain Management.

When any part of a subdivision is located in a special flood hazard area as identified by the Federal Emergency Management Agency:

- A. All public utilities and facilities, such as sewer, gas, electrical and water systems shall be located and constructed to minimize or eliminate flood damages.
- B. Adequate drainage shall be provided so as to reduce exposure to flood hazards.
- C. The plan shall include a statement that structures in the subdivision shall be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation. Such a restriction shall 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 statement 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 the plan.

11.14 Identification of Freshwater Wetlands.

Freshwater wetlands shall be identified in accordance with the *1987 Corps of Engineers Wetland Delineation Manual*, published by the United States Army Corps of Engineers.

11.15 Storm Water Management.

- A. Adequate provision shall be made for the management of the quantity and quality of all storm water generated within the subdivision, and any drained ground water through a management system of swales, culverts, underdrains, storm drains and best management practices equivalent to those described in the *Stormwater Management for Maine manual*, published by the Maine Department of Environmental Protection, January 2006, in conformance with the policies of the comprehensive plan. The storm water management system shall be designed to meet the standards in the Town of Berwick's Appendix A – Storm Water Runoff Design Criteria of the Subdivision Regulations.
- B. Where necessary to achieve the above standards, there shall be provided easements or drainage rights-of-way with swales, culverts, catch basins or other means of channeling surface water within the subdivision and over other properties. Wherever the storm drainage system is not within the right-of-way of a public street, perpetual easements shall be provided to the municipality allowing maintenance and improvement of the system.

11.16 Reservation or Dedication and Maintenance of Open Space and Common Land, Facilities, Play Areas & Services.

- A. All open space common land, facilities and property shall be owned by:
 - 1. The owners of the lots or dwelling units by means of a lot owners' association;
 - 2. An association which has as its principal purpose the conservation or preservation of land in essentially its natural condition; or
 - 3. The municipality.
- B. Further subdivision of the common land or open space and its use for other than non-commercial recreation, agriculture, or conservation purposes, except for easements for underground utilities, shall be prohibited. Structures and buildings accessory to non-commercial recreational or conservation uses may be erected on the common land. When open space is to be owned by an entity other than the municipality, there shall be a conservation easement deeded to the municipality prohibiting future development. The size of common play areas to be required in Major Subdivisions shall be at the discretion of the Planning Board.

- C. The common land or open space shall be shown on the final plan with appropriate notations on the plan to indicate:
 - 1. It shall not be used for future building lots; and
 - 2. Which portions of the open space, if any, may be dedicated for acceptance by the municipality.
 - 3. The specific common property and/or facilities that the developer, subdivider or homeowners' association is responsible for maintaining
 - 4. The developer or subdivider shall maintain control of the common property, and be responsible for its maintenance until two thirds (2/3) of the entire subdivision has been occupied.
- D. The final plan application shall include the following:
 - 1. Covenants for mandatory membership in the lot owners' association setting forth the owners' rights, interests, and privileges in the association and the common property and facilities, to be included in the deed for each lot or dwelling.
 - 2. Draft articles of incorporation of the proposed lot owners' association as a not-for-profit corporation; and
 - 3. Draft by-laws of the proposed lot owners' association specifying the responsibilities and authority of the association, the operating procedures of the association and providing for proper capitalization of the association to cover the costs of major repairs, maintenance and replacement of common facilities.
- E. In combination, the documents referenced in paragraph D above shall provide for the following.
 - 1. The developer or subdivider shall maintain control of the common property, and be responsible for its maintenance until two thirds (2/3) of the entire subdivision has been occupied.
 - 2. The homeowners' association shall have the responsibility of maintaining the common property or facilities. The deed restrictions must specify that maintenance of privately owned stormwater management facilities will be conducted and certified to the Town in accordance with Article 7.22 of the Town's Land Use Ordinance.
 - 3. The association shall levy annual charges against all owners of lots or dwelling units to defray the expenses connected with the maintenance, repair and replacement of common property and facilities and tax assessments.
 - 4. The association shall have the power to place a lien on the property of members who fail to pay dues or assessments.

11.17 Phosphorus Impacts on Great Ponds.

A. Phosphorus Export.

1. Any subdivision within the watershed of a great pond shall limit its post development phosphorus export to the standards contained in Table 11.17-1, dependent on the great pond in whose watershed the subdivision is located.

Table 11.17-1. Post Development Phosphorus Export

Water Quality Protection			Projected Watershed Development (50 yr.)		Allowable Phosphorus
<u>Lake</u>	<u>Category</u> <u>Export/Acre (lbs.)*</u>	<u>Level</u>	<u>(%)</u>	<u>(acres)*</u>	
Beaver Dam	moderate/sensitive	medium	25%	182	.034
Hatfield Lake	moderate/sensitive	medium	25%	175	.063

*If the proposed development is greater than 25% of the projected area of watershed development, the allowable phosphorus export per acre must be adjusted using appendix F, of the Department of Environmental Protection manual *Phosphorus Control in Lake Watershed: A Technical Guide for Evaluating Development*, revised September 1992.

The Board shall keep an accurate record of permits issued by watershed and shall notify the comprehensive planning committee of the actual development rates at five year intervals, as the comprehensive plan is revised. The above table shall be amended as required by amendments to the comprehensive plan, reflecting changes in expected development rates.

2. Simplified Phosphorus Review.

The simplified review may be used for a

- a. Proposed subdivision of three or four lots with less than 200 feet of new or upgraded street with a cumulative driveway length not to exceed 450 feet for a three lot subdivision or 600 feet for a four lot subdivision;
- b. Proposed subdivision of three or four lots with no new or upgraded street with a cumulative driveway length not to exceed 950 feet for three lot subdivisions or 1,100 feet for four lot subdivisions; or
- c. Proposed subdivision consisting of multi-family dwellings that have less than 20,000 square feet of disturbed area including building parking, driveway, lawn, subsurface waste water disposal systems, and infiltration areas, and new or upgraded streets not exceeding 200 linear feet.

A proposed subdivision which creates lots which could be further divided such that five or more lots may result shall be subject to the standard review procedures unless there are deed restrictions prohibiting future divisions of the lots.

3. Standard Review.

This section shall apply to proposed subdivisions which do not qualify for the simplified review. Phosphorus export from a proposed development shall be calculated according to the procedures in *Volume II - Phosphorus Control in Lake Watersheds: A Technical Guide for Evaluating New Development*, of the *Stormwater Management for Maine* manual published by the Maine Department of Environmental Protection, January 2008. When a proposed subdivision creates lots which are more than twice the required minimum lot size and there are no deed restrictions proposed to prohibit future divisions, the applicant shall either calculate phosphorus loading based on the maximum feasible number of lots, and shall design controls adequate to limit the resulting phosphorus loading, or shall reserve a portion of the permitted phosphorus export for future divisions.

4. Maintenance and Use Restrictions for Phosphorus Control Measures.

Provisions for monitoring, inspections, and maintenance of phosphorus control measures shall be included in the application.

a. Vegetative Buffer Strips.

Individual lot owners shall be required to maintain buffer areas on their individual lots in accordance with the following standards, to be specified in recorded deed restrictions and as notes on the plan. Where a vegetative buffer strip is to be owned in common by property owners in the subdivision, documentation establishing the lot owners' association shall include the following standards.

i. Wooded Buffers.

Maintenance provisions for wooded buffers shall provide for either of the following two options.

(a) No Disturbance.

Maintenance and use provisions for wooded buffer strips which are located on hydrologic soil group D soils and within 250 feet of the great pond or a tributary, or which are located on slopes over 20% shall include the following.

[1] Buffers shall be inspected annually for evidence of erosion or concentrated flows through or around the buffer. All eroded areas must be seeded and mulched. A shallow stone trench must be installed as a level spreader to distribute flows evenly in any area showing concentrated flows.

[2] All existing undergrowth (vegetation less than four feet high), forest floor duff layer, and leaf litter must remain undisturbed and intact, except that one winding walking path, no wider than six feet, is allowed through the buffer. This

path shall not be a straight line to the great pond or tributary and shall remain stabilized.

- [3] Pruning of live tree branches that do not exceed 12 feet above the ground level is permitted provided that at least the top two-thirds of the tree canopy is maintained.
- [4] No cutting is allowed of trees except for normal maintenance of dead, wind blown, or damaged trees.
- [5] Buffers shall not be used for all-terrain vehicle or vehicular traffic.

(b) Limited Disturbance.

Maintenance and use provisions for other buffer strips may include the following:

- [1] There shall be no cleared openings. An evenly distributed stand of trees and other vegetation shall be maintained.
 - [2] Activity within the buffer shall be conducted to minimize disturbance of existing forest floor, leaf litter and vegetation less than four feet in height. Where the existing ground cover is disturbed and results in exposed mineral soil, that area shall be immediately stabilized to avoid soil erosion.
 - [3] Removal of vegetation less than four feet in height is limited to that necessary to create a winding foot path no wider than six feet. This path shall not be a straight line to the great pond or a tributary. The path must remain stabilized.
 - [4] Pruning of live tree branches that do not exceed 12 feet in height above the ground level is permitted provided that at least the top two-thirds of the tree canopy is maintained.
 - [5] Where the removal of storm-damaged, diseased, unsafe, or dead trees results in a cleared opening, those openings shall be replanted with native trees at least three feet in height unless existing new tree growth is present.
 - [6] Buffers shall not be used for all terrain vehicle or vehicular traffic. ii. Non-wooded Buffers.
- (a) Non-wooded buffers may be allowed to revert or to be planted to forest, in which case the standards above shall apply.
 - (b) A buffer must maintain a dense, complete and vigorous cover of “non-lawn” vegetation which shall be mowed no more than once a year. Vegetation may include grass, other herbaceous species, shrubs and trees.

- (c) Activity within the buffer shall be conducted so as to prevent damage to vegetation and exposure of mineral soil. Burning of vegetation shall be prohibited.
- (d) Buffers shall not be used for all-terrain vehicles or other vehicular traffic.

b. Infiltration Systems.

Individual lot owners shall be responsible for maintenance of individual infiltration systems according to the standards specified in Article 7.22 of the Town's Land Use Ordinance. Requirements for maintenance shall be included in deed restrictions and as noted upon the plan. As an alternative to maintenance by individual lot owners, the applicant may designate some other entity to be contracted to take the responsibility, and shall include the above referenced maintenance provisions in any contractual agreement. Where infiltration systems serve more than one lot, a lot owners' association shall be established and the above referenced maintenance provisions shall be referenced in the documentation establishing the association.

c. Wet Ponds.

A lot owners' association shall be established to maintain wet ponds, unless the municipality or some other public entity agrees to assume inspection and maintenance duties. Documentation establishing the association or establishing an agreement with a public entity shall include the maintenance standards specified in Article 7.22 of the Town's Land Use Ordinance.

ARTICLE 12 - DESIGN GUIDELINES

This article is intended to provide an example of design guidelines, which if followed will result in meeting the appropriate performance standards of Article 11. Compliance with these guidelines shall be considered evidence of meeting those standards. Proposed subdivisions not in compliance with the design guidelines of this article may be considered, but the applicant shall provide clear and convincing evidence that the proposed design will meet the performance standard(s) and the statutory criteria. In all instances the burden of proof shall be upon the applicant to present adequate information to indicate all performance standards and statutory criteria for approval have been or will be met.

12.1 Sufficient Water.

A. Well Construction.

1. Due to the increased chance of contamination from surface water, dug wells for potable water shall be prohibited on lots smaller than one acre. On lots one acre or smaller, the applicant shall prohibit dug wells for potable water by deed restrictions and a note on the plan.
2. Wells shall not be constructed within 100 feet of the traveled way of any street, if located downhill from the street, or within 50 feet of the traveled way of any street, if located uphill of the street. This restriction shall be included as a note on the plan and deed restriction to the effected lots.

B. Fire Protection.

1. Fire hydrants connected to a public water supply system shall be located no further than 500 feet from any building.
2. Fire Protection must be provided in all subdivisions whether on water services or outside of water services. All proposals for Fire Protection will be reviewed by the Berwick Fire Chief.
3. Hydrants or other provisions for drafting water shall be provided to the specifications of the fire department. Minimum pipe size connecting dry hydrants to ponds or storage vaults shall be six inches.
4. Where the dry hydrant or other water source is not within the right-of-way of a proposed or existing street, an easement to the municipality shall be provided to allow access. A suitable accessway to the hydrant or other water source shall be constructed.

12.2 Traffic Conditions.

- A. All lots in a subdivision shall have frontage on streets designed and constructed in accordance with the Berwick Subdivision Regulations, or on existing town streets.
- B. Access Control.

1. Where a major subdivision (more than four lots) abuts or contains an existing or proposed arterial street, no residential lot may have vehicular access directly onto the arterial street. This requirement shall be noted on the plan and in the deed of any lot with frontage on the arterial street.
2. Where a lot has frontage on two or more streets, the access to the lot shall be provided to the lot across the frontage and to the street where there is lesser potential for traffic congestion and for hazards to traffic and pedestrians. This restriction shall appear as a note on the plan and as a deed restriction to the affected lots.
3. Subdivision Access Design for Subdivisions Entering onto Arterial Streets.

When the access to a subdivision is a street, the street design and construction standards of Section 12.2.B below shall be met. Where there is a conflict between the standards in this section and the standards of Section 12.2.B, the stricter or more stringent shall apply. The following roadways shall be considered arterial streets: Route 9, Route 4, and Route 236.

a. General.

Access design shall be based on the estimated volume using the access classification defined below. Traffic volume estimates shall be as defined in the *Trip Generation Manual*, current edition, published by the Institute of Transportation Engineers.

1. Low Volume Access: An access with 50 vehicle trips per day or less.
2. Medium Volume Access: Any access with more than 50 vehicle trips per day but less than 200 peak hour vehicle trips per day.
3. High Volume Access: Peak hour volume of 200 vehicle trips or greater.

b. Sight Distances.

Accesses shall be located and designed in profile and grading to provide the required sight distance measured in each direction. Sight distances shall be measured from the driver's seat of a vehicle standing on that portion of the exit with the front of the vehicle a minimum of ten feet behind the curbline or edge of shoulder, with the height of the eye 3½ feet, to the top of an object 4¼ feet above the pavement. The required sight distances are listed by road width and for various posted speed limits.

Two Lane Roads.

A minimum sight distance of ten feet for each mile per hour of posted speed limit shall be maintained or provided.

c. Vertical Alignment.

Accesses shall be flat enough to prevent the dragging of any vehicle undercarriage. Accesses shall slope upward or downward from the gutter line on a straight slope of 3% or less for at least 75 feet. The maximum grade over the entire length shall not exceed 8%.

d. Low Volume Accesses.

1. Skew Angle.

Low volume accesses shall be two-way operation and shall intersect the road at an angle as nearly 90° as site conditions permit, but in no case less than 60°.

2. Curb Radius.

The curb radius shall be between ten feet and 15 feet, with a preferred radius of 15 feet.

3. Access Width.

The width of the access shall be between 20 feet and 24 feet, with a preferred width of 20 feet.

e. Medium Volume Accesses.

1. Skew Angle.

Medium volume accesses shall be either one-way or two-way operation and shall intersect the road at an angle as nearly 90° as site conditions permit, but in no case less than 60°.

2. Curb Radius.

Curb radii will vary depending if the access has one-way or two-way operation. On a two-way access the curb radii shall be between 25 feet and 40 feet, with a preferred radius of 30 feet. On one way accesses, the curb radii shall be 30 feet for right turns into and out of the site, with a five foot radius on the opposite curb.

3. Width.

On a two-way access the width shall be between 24 and 26 feet, with a preferred width of 26 feet, however where truck traffic is anticipated, the width may be no more than 30 feet. On a one-way access the width shall be between 16 feet and 20, with a preferred width of 16 feet.

4. Curb-Cut Width.

On a two-way access the curb-cut width shall be between 74 feet and 110 feet with a preferred width of 86 feet. On a one-way access the curb-cut width shall be between 46 feet and 70 feet with a preferred width of 51 feet.

f. High Volume Accesses.

1. Skew Angle.

High volume accesses shall intersect the road at an angle as nearly to 90° as site conditions permit, but in no case less than 60°.

2. Curb Radius.

Without channelization islands for right-turn movements into and out of the site, the curb radii shall be between 30 feet and 50 feet. With channelization islands, the curb radii shall be between 75 feet and 100 feet.

3. Curb Cut Width.

Without channelization, curb-cut width shall be between 106 feet and 162 feet with a preferred width of 154 feet. With channelization, the curb-cut width shall be between 196 feet and 262 feet with a preferred width of 254 feet.

4. Entering and exiting accesses shall be separated by a raised median which shall be between six feet and ten feet in width. Medians separating traffic flows shall be no less than 25 feet in length, with a preferred length of 100 feet.

5. Width.

Access widths shall be between 20 feet and 26 feet on each side of the median, with a preferred width of 24 feet. Right turn only lanes established by a channelization island shall be between 16 feet and 20 feet, with a preferred width of 20 feet.

6. Appropriate traffic control signage shall be erected at the intersection of the access and the street and on medians and channelization islands.

g. Access Location and Spacing.

1. Minimum Corner Clearance.

Corner clearance shall be measured from the point of tangency for the corner to the point of tangency for the access. In general the maximum corner clearance should be provided as practical based on site constraints. Minimum corner clearances are listed in Table 12.2-1, based upon access volume and intersection type.

Table 12.2-1. Minimum Standards for Corner Clearance

<u>Access Type</u>	<u>Minimum Corner Clearance (feet)</u>	
	<u>Intersection Signalized</u>	<u>Intersection Unsignalized</u>
Low Volume	150	50
Medium Volume	150	50
High Volume	500	250

2. Access Spacing.

Accesses and street intersections shall be separated from adjacent accesses, streets and property lines as indicated in Table 12.2-2, in order to allow major through routes to effectively serve their primary function of conducting through traffic. This distance shall be measured from the access point of tangency to the access point of tangency for spacing between accesses and from the access point of tangency to a projection of the property line at the edge of the roadway for access spacing to the property line.

Table 12.2-2. Minimum Access Spacing

<u>Access Type</u>	Minimum Spacing to Property Line (Dpl) ¹ (feet)	Minimum Spacing to Adjacent Access by Access Type ² (Dsp) ³		
		Medium (feet)	High w/o RT* (feet)	High w/RT** (feet)
Low Volume	5			
Medium Volume	10	75		
High Volume (w/o RT)*	75	75	150	
High Volume (w/ RT)**	75	75	250	500

¹ Distance to Property Line (Dpl) measured from point of tangency of access to projection of property line on roadway edge

² For two more accesses serving a single parcel, or from a proposed access from an existing access

³ Spacing between Driveways (Dsp) measured from point of tangency of access to point of tangency of adjacent access

* High volume access without right turn (w/o RT) channelization

** High volume access with right turn (w/ RT) channelization

h. Number of Accesses.

The maximum number of accesses on to a single street is controlled by the available site frontage and the table above. In addition, the following criteria shall limit the number of accesses independent of frontage length.

1. No low volume traffic generator shall have more than one two-way access onto a single roadway.
2. No medium or high volume traffic generator shall have more than two two-way accesses or three accesses in total onto a single roadway.

i. Construction Materials/Paving.

1. All accesses entering a curbed street shall be curbed with materials matching the street curbing. Sloped curbing is required around all raised channelization islands or medians.
2. All accesses shall be paved with bituminous concrete pavement within the street right-of-way. All commercial accesses, regardless of access volume, shall be paved with bituminous concrete pavement within 30 feet of the street right-of-way.

C. Street Design and Construction Standards.

1. General Requirements.

- a. The Board shall not approve any subdivision plan unless proposed streets are designed in accordance with the specifications contained in the Berwick Subdivision Regulations. Approval of the final plan by the Board shall not be deemed to constitute or be evidence of acceptance by the municipality of any street or easement.
- b. Applicants shall submit to the Board, as part of the final plan, detailed construction drawings showing a plan view, profile, and typical cross-section of the proposed streets and existing streets within 300 feet of any proposed intersections. The plan view shall be at a scale of one inch equals no more than 50 feet. The vertical scale of the profile shall be one inch equals no more than five feet. The plans shall include the following information:
 1. Date, scale, and north point, indicating magnetic or true.
 2. Intersections of the proposed street with existing streets.
 3. Roadway and right-of-way limits including edge of pavement, edge of shoulder, sidewalks, and curbs.
 4. Kind, size, location, material, profile and cross-section of all existing and proposed drainage structures and their location with respect to the existing natural waterways and proposed drainage ways.
 5. Complete curve data shall be indicated for all horizontal and vertical curves.

6. Turning radii at all intersections.
 7. Centerline gradients.
 8. Size, type and locations of all existing and proposed overhead and underground utilities, to include but not be limited to water, sewer, electricity, telephone, lighting, and cable television.
- c. Upon receipt of plans for a proposed public street the Board shall forward one copy to the municipal officers, the road commissioner, and the municipal engineer for review and comment. Plans for streets which are not proposed to be accepted by the municipality shall be sent to the municipal engineer for review and comment.
 - d. Where the applicant proposes improvements within existing public streets, the proposed design and construction details shall be approved in writing by the road commissioner or the Maine Department of Transportation, as appropriate.
 - e. Where the subdivision streets are to remain private roads, the following words shall appear on the recorded plan.

“All roads in this subdivision shall remain private roads to be maintained by the developer or the lot owners and shall not be accepted or maintained by the Town, until they meet the municipal street design and construction standards.”

2. Street Design Standards.

- a. These design guidelines shall control the roadway, shoulders, curbs, sidewalks, drainage systems, culverts, and other appurtenances associated with the street, and shall be met by all streets within a subdivision, unless the applicant can provide clear and convincing evidence that an alternate design will meet good engineering practice and will meet the performance standards of Article 11.
- b. Reserve strips controlling access to streets shall be prohibited except where their control is definitely placed with the municipality.
- c. Adjacent to areas zoned and designed for commercial use, or where a change of zoning to a zone which permits commercial uses is contemplated by the municipality, the street right-of-way and/or pavement width shall be increased on each side by half of the amount necessary to bring the road into conformance with the standards for commercial streets in these regulations.

- d. Where a subdivision borders an existing narrow street (not meeting the width requirements of the standards for streets in these regulations), or when the comprehensive plan indicates plans for realignment or widening of a road that would require use of some of the land in the subdivision, the plan shall indicate reserved areas for widening or realigning the road marked "Reserved for Road Realignment (Widening) Purposes." Land reserved for such purposes may not be included in computing lot area or setback requirements of the zoning ordinance.
- e. Any subdivision expected to generate average daily traffic of 200 trips per day or more shall have at least two street connections with existing public streets or streets on an approved subdivision plan for which performance guarantees have been filed and accepted. Any street with an average daily traffic of 200 trips per day or more shall have at least two street connections leading to existing public streets or streets on an approved subdivision plan for which performance guarantees have been filed and accepted.
- f. The design standards of Table 12.2-3 shall apply according to street classification.

Table 12.2-3. Street Design Guidelines

<u>Description</u>	<u>Type of Street</u>			
	<u>Arterial</u>	<u>Collector</u>	<u>Minor</u>	<u>Industrial/ Commercial</u>
Minimum Right-of-Way Width	80'	50'	50'	60'
Minimum Traveled Way Width	44'	24'	20'	30'
Minimum Width of Shoulders (each side)	5'	3'	3'	9'
Sidewalk Width	8'	5'	5'	8'
Minimum Grade	.5%	.5%	.5%	.5%
Maximum Grade*	5%	6%	8%	5%
Minimum Centerline Radius without superelevation	500'	280'	280'	400'
with superelevation	350'	175'	175'	300'
Roadway Crown**	1/4"/ft.	1/4"/ft.	1/4"/ft.	1/4"/ft.
Minimum angle of street intersections***	90°	90°	75°	90°
Maximum grade within 75 ft. of intersection	3%	3%	3%	3%
Minimum curb radii at intersections	30'	25'	20'	30'****
Minimum r/o/w radii at intersections	20'	10'	10'	20'

* Maximum grade may be exceeded for a length of 100 feet or less.

** Roadway crown is per foot of lane width.

- *** Street intersection angles shall be as close to 90° as feasible but no less than the listed angle.
- **** Should be based on turning radii of expected commercial vehicles, but no less than 30 feet

- g. The centerline of the roadway shall be the centerline of the right-of-way.
- h. Dead-End Streets.

- 1. Cul-de-sacs:

In addition to the design standards in Table 12.2-3, dead-end streets shall be constructed to provide a tear drop cul-de-sac turn-around in accordance with the design standards in Attachment B. Where the cul-de-sac is in a wooded area prior to development, a stand of trees shall be maintained within the center of the cul-de-sac. When not in a wooded area it shall be grassed, landscaped, or kept in a natural state. The Board shall require the reservation of a 20 foot easement in line with the street to provide continuation of pedestrian traffic or utilities to the next street. The Board may also require the reservation of a 50-foot easement in line with the street to provide continuation of the road where future subdivision is possible. The Board may require streets to be connected if cul-de-sacs are located less than 600 ft. apart as measured from the center of the cul-de-sac, or if the entrance to a dead-end street is within 600 ft. of another entrance to a dead-end street.

Revised Cul-de-sac design to be included with Subdivision Regulations.

- 2. Hammerheads:

Hammerheads shall be used as a temporary dead-end to a street that is built in phases. In addition to the design standards in Table 12.2-3, temporary dead-end streets shall be constructed to provide a hammerhead turn-around in accordance with the design standards in Attachment C. The hammerhead shall be located beyond the last lot in the phase, and no driveway entrance shall have access off of a hammerhead leg.

- i. Grades, Intersections, and Sight Distances.

- 1. Grades of all streets shall conform in general to the terrain, so that cut and fill are minimized while maintaining the grade standards above.
- 2. All changes in grade shall be connected by vertical curves in order to provide the following minimum stopping sight distances based on the street design speed.

Design Speed (mph)	20	25	30	35
Stopping Sight Distance (ft.)	125	150	200	250

Stopping sight distance shall be calculated with a height of eye at 3½ feet and the height of object at ½ foot.

3. Where new street intersections or driveway curb-cuts are proposed, sight distances, as measured along the road onto which traffic will be turning, shall be based upon the posted speed limit and conform to the table below. Sight distances shall be measured from the driver's seat of a vehicle standing on that portion of the exit with the front of the vehicle a minimum of ten feet behind the curbline or edge of shoulder, with the height of the eye 3½ feet, to the top of an object 4¼ feet above the pavement.

Posted Speed Limit (mph)	25	30	35	40	45	50	55
Sight Distance (ft.)	250	300	350	400	450	500	550

Where necessary, corner lots shall be cleared of all growth and sight obstructions, including ground excavation, to achieve the required visibility.

4. Cross (four-cornered) street intersections shall be avoided insofar as possible, except as shown on the comprehensive plan or at other important traffic intersections. A minimum distance of 125 feet shall be maintained between centerlines of minor streets and 200 feet between collectors or a collector and minor street.

j. Sidewalks.

Sidewalks shall be installed within all subdivisions within areas designated as growth areas in the comprehensive plan. Where sidewalks exist adjacent to a proposed subdivision outside of growth areas, sidewalks shall be installed connecting to existing sidewalks. Where installed, sidewalks shall meet these minimum requirements.

1. Location.

Sidewalks may be located adjacent to the curb or shoulder but it is recommended to locate sidewalks a minimum of 2½ feet from the curb facing or edge of shoulder if the street is not curbed.

2. Bituminous Sidewalks.

- (a) The “subbase” aggregate course shall be no less than 12 inches thick after compaction.
- (b) The hot bituminous pavement surface course shall be MDOT plant mix grade D constructed in two lifts, each no less than one inch after compaction.

3. Portland Cement Concrete Sidewalks.

- (a) The “subbase” aggregate shall be no less than 12 inches thick after compaction.
- (b) The Portland cement concrete shall be reinforced with six inch square, number ten wire mesh and shall be no less than four inches thick.

j. Curbs shall be installed within all subdivisions within areas designated as growth areas in the comprehensive plan. Granite curbing shall be installed on a thoroughly compacted gravel base of six inches minimum thickness. Bituminous curbing shall be installed on the base course of the pavement. The specified traveled way width above shall be measured between the curbs.

k. Granite curbs shall be installed within all subdivisions within areas designated as growth areas in the comprehensive plan. Granite curbing shall be installed on a thoroughly compacted gravel base of six inches minimum thickness. The specified traveled way width above shall be measured between the curbs. The Planning Board may require vertical granite curb or sloped granite curb.

3. Street Construction Standards.

- a. The minimum thickness of material after compaction shall meet the specifications in Table 12.2-4.

Table 12.2-4. Minimum Pavement Materials Thicknesses

<u>Street Materials</u>	<u>Arterial</u>	<u>Collector</u>	<u>Minor</u>	<u>Industrial/ Commercial</u>
<u>Aggregate Subbase Course (Max. sized stone 6")</u>				
Without base gravel	24"	18"	18"	24"
With base gravel	20"	15"	15"	20"
<u>Crushed Aggregate Base Course (if necessary)</u>	4"	3"	3"	4"
Hot Bituminous Pavement				
Total Thickness	3 3/4"	3 3/4"	3 3/4"	4"
Surface Course	1 1/4"	1 1/4"	1 1/4"	1 1/4"
Base Course	2 1/2"	2 1/2"	2 1/2"	2 3/4"

b. Preparation.

1. Before any clearing has started on the right-of-way, the center line and side lines of the new road shall be staked or flagged at 50 foot intervals.
2. Before grading is started, the entire area within the right-of-way necessary for traveled way, shoulders, sidewalks, drainage-ways, and utilities shall be cleared of all stumps, roots, brush, and other objectionable material. All shallow ledge, large boulders and tree stumps shall be removed from the cleared area.
3. All organic materials or other deleterious material shall be removed to a depth of two feet below the subgrade of the roadway. Rocks and boulders shall also be removed to a depth of two feet below the subgrade of the roadway. On soils which have been identified by the municipal engineer as not suitable for roadways, either the subsoil shall be removed from the street site to a depth of two feet below the subgrade and replaced with material meeting the specifications for gravel aggregate subbase below, or a Maine Department of Transportation approved stabilization geotextile may be used.
4. Except in a ledge cut, side slopes shall be no steeper than a slope of three feet horizontal to one foot vertical, and shall be graded, loamed, limed, fertilized, and seeded according to the specifications of the erosion and sedimentation control plan. Where a cut results in exposed ledge a side slope no steeper than one foot horizontal to four feet vertical is permitted.
5. All underground utilities shall be installed prior to paving to avoid cuts in the pavement. Building sewers and water service connections shall be installed to the edge of the right-of-way prior to paving.
6. Driveway culverts must be sized in consultation with the Berwick Road Commissioner and the Public Works Foreman.

c. Bases and Pavement.

1. Bases/Subbase.

Reference Section 304.02 of the Maine Department of Transportation Standard Specifications publication dated, December 2002 or current edition.

- (a) The Aggregate subbase course shall be sand or gravel of hard durable particles free from vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of the part that passes a three inch square mesh sieve shall meet the grading requirements of Table 12.2-5.

Table 12.2-5. Aggregate Subbase Gradation Requirements

Reference MDOT Material Specification 703.06(b)(Type D). Refer to State of Maine Department of Transportation Standard Specifications publication dated, December 2002 or current edition.

<u>Sieve Designation</u>	<u>Percentage by Weight Passing Square Mesh Sieves</u>
1/4inch	25-70%
No. 40	0-30%
No. 200	0-7%

Aggregate for the subbase shall contain no particles of rock exceeding six inches in any dimension.

- (b) If the Aggregate Subbase Course is found to be not fine-gradable because of larger stones, then a minimum of three inches of Aggregate Base Course shall be placed on top of the subbase course. The Aggregate Base Course shall be screened or crushed gravel of hard durable particles free from vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of the part that passes a three inch square mesh sieve shall meet the grading requirements of Table 12.2-6.

Aggregate for the base shall contain no particles of rock exceeding two inches in any dimension.

Table 12.2-6. Base Course Grading Requirements

Reference MDOT Material Specification 703.03(a)(Type A). Refer to State of Maine Department of Transportation Standard Specifications publication dated December 2002 or current edition.

<u>Sieve Designation</u>	<u>Percentage by Weight Passing Square Mesh Sieves</u>
1/2 inch	45-70%
1/4 inch	30-55%
No. 40	0-20%
No. 200	0-5%

2. Placing

Refer to the procedure given in Section 304.03 of the State of Maine Department of Transportation Standard Specifications publication dated December 2002 or current edition.

3. Shaping, Compacting, and Stabilizing

Reference Section 304.04 of the State of Maine Department of Transportation Standard Specifications publication dated December 2002 or current edition.

Compaction of each layer shall continue until a density of not less than 95% of the maximum density has been achieved for the full width and depth of the layer. The maximum density shall be determined in accordance with T180, Method C or D. Field density tests will be performed by a qualified independent testing company at the expense of the contractor or developer. Compaction test locations shall be designated by the Town or the inspecting engineering firm acting as the Town's representative. The surface, compaction and stability, shall be satisfactorily maintained until the pavement course has been placed. If required, additional water and fine material shall be applied to prevent checking, raveling or rutting.

Fine material added to the base shall be uniformly blended into the top 225 mm [9 in] of the course being stabilized. The blended material shall meet the requirements of Section 304.02 Aggregate.

If the top of any layer becomes contaminated by degradation of the aggregate or addition of foreign material, the contaminated material shall be removed and replaced with the specified material.

All layers of aggregate subbase course shall be compacted to the required density immediately after placing. As soon as the compaction of any layer has been completed, the next layer shall be placed unless otherwise authorized.

The Contractor shall bear full responsibility for and make all necessary repairs to the subbase course and the subgrade until the full depth of the subbase course is placed and compacted.

The top of any aggregate base or subbase course layer shall be scarified and loosened for a minimum depth of 25 mm [1 in] immediately prior to the placing of the next layer of aggregate base or subbase.

The surface of each layer shall be maintained during compaction operations in such a manner that a uniform texture is produced and the aggregate firmly keyed. The moisture content of the material shall be maintained at the proper percent to attain the required compaction and stability.

If voids remain on the surface after the subbase course has been constructed to grade, compacted, checked and approved, sand-leveling material shall be dumped and spread as directed. The quantity of sand leveling material shall be limited to the amount necessary to fill the voids and the minor low areas on the subbase surface. After the sand leveling material has been spread, it shall be completely rolled by a rubber-tired roller with water applied, if necessary. The surface of this material shall be maintained in its compacted and graded condition until the bituminous pavement has been placed. (revise following numbering)

4. Pavement Joints.

Where pavement joins an existing pavement, the existing pavement shall be cut along a smooth line and form a neat, even, vertical joint.

5. Pavements.

- (a) Minimum standards for the base layer of pavement shall be the Maine Department of Transportation specifications for plant mix grade B with an aggregate size no more than one inch maximum and a liquid asphalt content between 4.8% and 6.0% by weight depending on aggregate characteristics. The pavement may be placed between April 15 and November 15, provided the air temperature in the shade at the paving location is 35°F or higher and the surface to be paved is not frozen or unreasonably wet.
- (b) Minimum standards for the surface layer of pavement shall be the Maine Department of Transportation specifications for plant mix grade C or D with an aggregate size no more than $\frac{3}{4}$ inch maximum and a liquid asphalt content between 5.8% and 7.0% by weight depending on aggregate characteristics. The pavement may be placed between April 15 and October 15, provided the air temperature in the shade at the paving location is 50°F or higher.

12.3 Wildlife Habitat, Rare Natural Areas or Public Access to the Shoreline.

A. Preservation of Natural Beauty and Aesthetics.

1. Unless located in areas designated as a growth area in the comprehensive plan, a subdivision in which the land cover type at the time of application is forested shall maintain a wooded buffer strip no less than 50 feet in width along all existing public roads. The buffer may be broken only for driveways and streets.
2. Unless located in areas designated as a growth area in the comprehensive plan, building location shall be restricted from open fields, and shall be located within forested portions of the subdivision. When the subdivision contains no forest or insufficient forested portions to include all buildings, the subdivision shall be designed to minimize the appearance of building when viewed from existing public streets.
3. When a proposed subdivision contains a ridge line identified in the comprehensive plan as a visual resource to be protected, the plan shall restrict tree removal and prohibit building placement within 50 feet vertical distance of the ridge top. These restrictions shall appear as notes on the plan and as covenants in the deed.
4. When a proposed subdivision street traverses open fields, the plan shall include the planting of street trees. Street trees shall include a mixture of species. Trees shall be planted no more than 50 feet apart.

B. Retention of Open Spaces and Natural or Historic Features.

1. The subdivision shall reserve between 5% and 10% of the area of the subdivision as open space in order to provide for the recreational needs of the occupants of the subdivision and/or to maintain the scenic or natural beauty of the area. In determining the need for open space the Board shall consider the needs identified in the comprehensive plan or recreation plan for open space or recreation facilities in the neighborhood surrounding the subdivision and the policies of the plan for meeting those needs; the proximity of the subdivision to neighboring dedicated open space or recreation facilities; the type of development and the demographic characteristics of potential residents in the subdivision; and the density or lot sizes of the development.
2. Subdivisions with an average density of more than three dwelling units per acre shall provide no less than 50% of the open space as usable open space to be improved for ball fields, playgrounds or other similar active recreation facility. A site intended to be used for active recreation purposes, such as a playground or a play field, should be relatively level and dry, have a total frontage on one or more streets of at least 200 feet, and have no major dimensions of less than 200 feet.
3. Sites selected primarily for scenic or passive recreation purposes shall have such access or frontage as the Board may deem suitable.

4. Proposed subdivisions which include or are adjacent to buildings or sites on the National Register of Historic Places or which the comprehensive plan has identified as being of historical significance shall be designed in such a manner as to minimize the impacts on the historic features. When the historic features to be protected include buildings, the placement and the architectural design of new structures in the subdivision shall be similar to the historic structures. The Board may seek the advice of the Maine Historic Preservation Commission in reviewing such plans.

C. Protection of Significant Wildlife Habitat and Important Habitat Areas.

The following guidelines are designed to protect the significant wildlife resources identified in the municipality. The Board recognizes that wildlife management must take into account many site specific variables. Applicants proposing to subdivide land within identified wildlife resources must consult with the Maine Department of Inland Fisheries and Wildlife or a qualified wildlife biologist and provide their written comments to the Board. The guidelines of this section shall apply to only those subdivisions which include significant wildlife habitat or resources identified in Section 11.8.C.

1. Protection of Habitat of Endangered or Threatened Species.
 - a. Habitat or species appearing on the official state or federal lists of endangered or threatened species shall be placed in open space.
 - b. Deed restrictions and notes on the plan shall reflect standards from the Department of Inland Fisheries and Wildlife for removal of vegetation within 250 feet of the habitat for species appearing on the list of endangered or threatened species unless the Department of Inland Fisheries and Wildlife has approved cutting of vegetation in writing.
2. Protection of Waterfowl, Shorebird, and Wading Bird Habitat, Atlantic Salmon Spawning and Nursery Areas.
 - a. There shall be no cutting of vegetation within the strip of land extending 75 feet inland from the normal high-water mark of the following habitat areas:
 1. High and moderate value waterfowl and wading bird habitats, including nesting and feeding areas;
 2. Other important habitat areas identified in the comprehensive plan.
 - b. This restriction shall appear as a note on the plan and as a deed restriction to the affected lots.
3. Protection of Deer Wintering Areas.

The report prepared by a wildlife biologist, selected or approved by the Board, shall include a management plan for deer wintering areas.
4. Protection of Important Shoreland Areas.

- a. Except as in areas described in Section 12.3.C.2, within all areas subject to the state mandated 250 foot shoreland zone:
 1. Tree removal shall be limited to no more than 40% of the volume of trees four inches or more in diameter measured at 4¹/₂ feet above the ground level on any lot in any ten year period.
 2. Cleared openings for development, including but not limited to, principal and accessory structures, driveways and sewage disposal areas, shall not exceed in the aggregate, 25% of the lot area or 10,000 square feet, whichever is greater, including land previously developed.
- b. These restrictions shall appear as notes on the plan and as deed restrictions to the affected lots.
5. If the proposed subdivision includes other important wildlife habitat as identified by the Department of Inland Fisheries and Wildlife or the comprehensive plan, the restrictions on activities in and around these areas shall be reviewed by the Department or a qualified wildlife biologist and their comments presented in writing to the Board.

12.4 Storm Water Management Design Guidelines.

- A. Design of best management practices shall be substantially equivalent to those described in the *Stormwater Management for Maine* manual, published by the Maine Department of Environmental Protection, January 2006. See Appendix A for the Town of Berwick's Storm Water Runoff Design Criteria.
- B. Drainage easements for existing water courses or proposed drainage ways shall be provided at least 30 feet wide, conforming substantially with the lines of existing natural drainage.
- C. The minimum pipe size for any storm drainage pipe shall be 15 inches for driveway entrances and 18 inches for cross culverts. Maximum trench width at the pipe crown shall be the outside diameter of the pipe plus two feet. Pipe shall be bedded in a fine granular material, containing no stones larger than three inches, lumps of clay, or organic matter, reaching a minimum of six inches below the bottom of the pipe extending to six inches above the top of the pipe.
- D. Catch basins shall be installed where necessary and when located within a street shall be located at the curb line.
- E. Storm Drainage Construction Standards.
 1. Materials.
 - a. Storm drainage pipes shall conform to the requirements of Maine Department of Transportation materials specifications Section 706 for non-metallic pipe and Section 707 for metallic pipe. Bituminous-coated steel pipes shall not be used.

- b. Where the storm drainage pipe is to be covered by ten feet or more of fill material, pipe material with a 50 year life shall be used. These materials include concrete pipe, polymer coated galvanized corrugated steel pipe, polyvinyl-chloride (PVC) pipe, and corrugated aluminum alloy pipe.

2. Pipe Gauges.

Metallic storm drainage pipe shall meet the thickness requirements of Table 12.4-1, depending on pipe diameter:

Table 12.4-1. Culvert Size and Thicknesses Material

<u>Inside Diameter</u>	Galvanized CMP	Aluminum Coated CMP
	Aluminum/Zinc Coated CMP <u>Corrugated Aluminum Alloy</u>	<u>Polymer Coated CMP</u>
15" to 24"14 ga.	16 ga.	
30" to 36"12 ga.	14 ga.	
42" to 54"	10 ga.	12 ga.
60" to 72"	8 ga.	10 ga.

3. Drain inlet alignment shall be straight in both horizontal and vertical alignment unless specific approval of a curvilinear drain is obtained in writing from the Board, after consultation with the municipal engineer.
 4. Manholes shall be provided at all changes in vertical or horizontal alignment and at all junctions. On straight runs, manholes shall be placed at a maximum of 300 foot intervals.
- F. Upon completion, each catch basin or manhole shall be cleaned of all accumulation of silt, debris or foreign matter and shall be kept clean until final acceptance.

12.5 Impact on Water Quality or Shoreline.

Within a strip of land extending 100 feet inland from the normal high-water line of a great pond or any tributary to a great pond, and 75 feet from any other water body or the upland edge of a wetland, a buffer strip of vegetation shall be preserved. The deeds to any lots which include any such land shall contain the following restrictions:

- A. There shall be no cleared opening greater than 250 square feet in the forest canopy as measured from the outer limits of the tree crown. However, a footpath not to exceed ten feet in width as measured between tree trunks is permitted provided that a cleared line of sight to the water through the buffer strip is not created. Adjacent to a great pond, or a tributary to a great pond, the width of the foot path shall be limited to six feet.
- B. Selective cutting of trees within the buffer strip is permitted provided that a well distributed stand of trees and other vegetation is maintained. No more than 40% of the total volume of trees four inches or more in diameter, measured at 4½ feet above ground level may be removed in any ten year period.

- C. In order to protect water quality and wildlife habitat adjacent to great ponds, and tributaries to great ponds, existing vegetation under three feet in height and other ground cover shall not be removed, except to provide for a footpath or other permitted uses as described above.
- D. Pruning of tree branches, on the bottom third of the tree is permitted.

12.6 Blocks.

Where street lengths exceed 1,000 feet between intersections with other streets, the Board may require a utility/pedestrian easement, at least 20 feet in width, to provide for underground utility crossings and/or a pedestrian pathway of at least five feet in width constructed in accordance with design standards in Section 12.3.B.2.j. Maintenance obligations of the easement shall be included in the written description of the easement.

12.7 Lots.

- A. Wherever possible, side lot lines shall be perpendicular to the street.
- B. The subdivision of tracts into parcels with more than twice the required minimum lot size shall be laid out in such a manner as either to provide for or preclude future division. Deed restrictions and notes on the plan shall either prohibit future divisions of the lots or specify that any future division shall constitute a revision to the plan and shall require approval from the Board, subject to the criteria of the subdivision statute, the standards of these regulations and conditions placed on the original approval.
- C. If a lot on one side of a stream, road or other similar barrier fails to meet the minimum requirements for lot size, it may not be combined with a lot on the other side of the stream or road to meet the minimum lot size.
- D. The ratio of lot length to width shall not be more than three to one. Flag lots and other odd shaped lots in which narrow strips are joined to other parcels in order to meet minimum lot size requirements are prohibited.
- E. In areas served by a postal carrier, lots shall be numbered in such a manner as to facilitate mail delivery. Even numbers shall be assigned to lots on one side of the street, and odd numbers on the opposite side. Where the proposed subdivision contains the extension of an existing street or street approved by the Board, but not yet constructed, the lot numbers shall correspond with the existing lot numbers. The house numbering shall be reviewed by the Town of Berwick Addressing Committee/Clerk and his comments considered by the Board.

12.8 Monuments.

- A. Stone or precast concrete monuments shall be set at all street intersections and points of curvature, but no further than 750 feet apart along street lines without curves or intersections.
- B. Stone or precast concrete monuments shall be set at all corners and angle points of the subdivision boundaries where the interior angle of the subdivision boundaries is 135° or less.
- C. Stone or concrete monuments shall be a minimum of four inches square at the top and three feet in length, and set in the ground at final grade level. After they are set, drill hole ½ inch deep shall locate the point or points described above.
- D. All other subdivision boundary corners and angle points, as well as all lot boundary corners and angle points shall be marked by suitable monumentation, as required by the Maine Board of Registration of Land Surveyors. Certification that all lot boundary monuments have been placed shall be presented to the Code Enforcement Officer prior to the issuance of any building permit.

12.9 Phosphorus Export.

- A. When a proposed subdivision is within the direct watershed of a great pond and qualifies for the simplified review procedure, buffer strips shall be provided in accordance with the design criteria set forth in *Volume II – Phosphorus Control in Lake Watersheds: A Technical Guide for Evaluating New Development*, of the *Stormwater Management for Maine* manual dated January 2008 published by the Maine Department of Environmental Protection. Buffer strips shall be provided on the downhill side of all lots along all tributaries to great ponds and along the great pond.
- B. When the proposed subdivision is within the direct watershed of a great pond and does not qualify for simplified reviewed, the phosphorus control measures shall meet the design criteria set forth in *Volume II – Phosphorus Control in Lake Watersheds: A Technical Guide for Evaluating New Development*, of the *Stormwater Management for Maine* manual dated January 2008 published by the Maine Department of Environmental Protection.

ARTICLE 13 - PERFORMANCE GUARANTEES

13.1 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 construction costs of all required improvements, taking into account the time-span of the construction schedule and the inflation rate for construction costs. In addition, the applicant shall deposit with the Town Escrow Agent or Planning Office an amount equal to a minimum of 6% of the estimated costs of construction of streets, sidewalks, drainage, detention ponds, recreation areas, playgrounds, sewer lines, water lines, or other utility or use requiring underground construction. This fee is to be paid by the developer to the Town of Berwick upon final approval of the subdivision. Any remaining funds plus interest will be refunded to the applicant at the completion of the project:

- A. Either a certified check payable to the municipality or a savings account or certificate of deposit naming the municipality as owner, for the establishment of an escrow account;
- B. A performance bond payable to the municipality issued by a licensed surety company, approved by the municipal officers, or town manager;
- C. An irrevocable letter of credit from a licensed financial institution establishing funding for the construction of the subdivision, from which the Municipality may draw if construction is inadequate, approved by the municipal officers, or town manager; or

The conditions and amount of the performance guarantee shall be determined by the Board with the advice of the municipal engineer, road commissioner, municipal officers, and/or municipal attorney.

13.2 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 applicant will be in default and the municipality shall have access to the funds to finish construction.

13.3 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 applicant, 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 applicant 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 applicant and the amount withdrawn to complete the required improvements.

13.4 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 applicant, and the procedures for collection by the municipality. The bond documents shall specifically reference the subdivision for which approval is sought.

13.5 Letter of Credit.

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

13.6 Phasing of Development.

The Board may approve plans to develop a major subdivision in separate and distinct phases. This may be accomplished by limiting final approval to those lots abutting that section of the proposed subdivision street which is covered by a performance guarantee. When development is phased, road construction shall commence from an existing public way. Final approval of lots in subsequent phases shall be given only upon satisfactory completion of all requirements pertaining to previous phases.

13.7 Release of Guarantee.

Prior to the release of any part of the performance guarantee, the Town Manager as Escrow Agent shall determine to its satisfaction, in part upon the report of the municipal engineer or other qualified individual retained by the municipality and any other agencies and departments who may be involved, that the proposed improvements meet or exceed the design and construction requirements for that portion or phase of the subdivision for which the release is requested.

13.8 Default.

If upon inspection, the municipal engineer or other qualified individual retained by the municipality 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 or she shall so report in writing to the code enforcement officer, the municipal officers, the Board, and the applicant or builder. The municipal officers shall take any steps necessary to preserve the municipality's rights.

13.9 Improvements Guaranteed.

Performance guarantees shall be tendered for all improvements required to meet the standards of these regulations and for the construction of the streets, storm water management facilities, public sewage collection or disposal facilities, public water systems, erosion and sedimentation control measures, and street lighting.

ARTICLE 14 - WAIVERS

14.1 Waivers Authorized.

Where the Board makes written findings of fact that there are special circumstances of a particular parcel proposed to be subdivided, it may waive portions of the submission requirements, unless otherwise indicated in the regulations, provided the applicant has demonstrated that the performance standards of these regulations and the criteria of the subdivision statute have been or will be met, the public health, safety, and welfare are protected, and provided the waivers do not have the effect of nullifying the intent and purpose of the comprehensive plan, the zoning ordinance, or these regulations.

14.2 Findings of Fact Required.

Where the Board makes written findings of fact that due to special circumstances of a particular lot proposed to be subdivided, the provision of certain required improvements is not requisite to provide for the public health, safety or welfare, or are inappropriate because of inadequate or lacking connecting facilities adjacent to or in proximity of the proposed subdivision, it may waive the requirement for such improvements, subject to appropriate conditions, provided the waivers do not have the effect of nullifying the intent and purpose of the comprehensive plan, the zoning ordinance, or these regulations, and further provided the performance standards of these regulations and the criteria of the subdivision statute have been or will be met by the proposed subdivision.

14.3 Conditions.

Waivers may only be granted in accordance with Sections 14.1 and 14.2. When granting waivers, the Board shall set conditions so that the purposes of these regulations are met.

14.4 Waivers to be Shown on Final Plan.

When the Board grants a waiver to any of the improvements required by these regulations, the final plan, to be recorded at the Registry of Deeds, shall indicate the waivers granted and the date on which they were granted.

ARTICLE 15 - APPEALS

15.1 Appeals to Superior Court.

An aggrieved party may appeal any decision of the Board under these regulations to York County Superior Court, within thirty days of the date the Board issues a written order of its decision.

APPENDIX A

Town of Berwick's Storm Water Runoff Design Criteria

Drainage Calculation Methods

The technique used for calculating storm drainage shall be the Soil Cover Complex Method (Better known as the SCS Runoff Curve Number Method). The only exception will be for calculating the flow to open channels or through the catch basin inlets and related closed drain system associated with street or parking lot runoff having less than 20 acres contributing drainage area. The designer may use either the SCS method or the Rational Method for these instances.

Streets With Curbing and Catch Basins

Catch basin grate inlet spacing and capacity shall be analyzed to insure gutter spread (surface flooding) does not cause a hazardous situation for vehicle traffic. It is considered hazardous if the roadway grade and/or inefficient grate inlet capacity causes a surface water flow width (spread width) of more than 1/2 of the travel lane width. The normal design frequency to be used for inlet capacity and spacing shall be the 2-year frequency storm. Inlets placed at sump locations shall be checked for capacity and spread width using the peak discharge from a 10-year frequency storm event.

Pre- and Post-Development Runoff Comparison

For developments that create less than one acre of disturbed area, the Basic Performance Standards specified in the Maine Department of Environmental Protection *Chapter 500: Stormwater Management, Appendix A-Erosion and Sedimentation Control* rules shall be utilized.

For developments that create one or more acres of disturbed area, the stormwater management provisions specified in Chapters 500 and 502 of the Maine Department of Environmental Protection Stormwater Management rules will apply.

Storm Water Management and Erosion and Sediment Control Best Management Practices (BMPs)

The following table specifies the required design storm frequency for the various BMPs associated with Subdivisions and Site Plan Development in the Town of Berwick

Structure or BMP	Storm Frequency	Notes
Ponds and Basins: Detention, Retention, Extended Detention, and any Storm Water Storage Type Pond, Basin or Structure	2-Year, 25-Year and 50-Year, 24-Hour Duration Storms	Flood Routing using the SCS's Technical Release 20 (TR-20) or the equivalent is required. When applicable, State and Federal Regulations must be adhered to, including the Maine DEP manual <i>Stormwater Management for Maine, January 2006..</i>
Channels: Diversion, Waterways, Storm Water Conveyance Channels,	10-Year, 24-Hour Duration Storm	This does not apply to large streams or rivers where damage from flooding must be considered. Channels shall be designed in accordance with the Maine DEP manual <i>Stormwater Management for Maine, January 2006.</i>
Culverts and Bridges:	25-Year, 24-Hour Duration Storm	This does not apply to State and Federal Highways where the design is not regulated by the Town of Berwick.
Streets With Curbing: Catch Basin Inlet Grates	2-Year Storm, (10-Year Storm @ Sump Locations)	Either the SCS or the Rational Method may be used for design if the Drainage Area Less than 20 Acres.
Streets, All: Open Channel or Closed Drain Pipe System	10-Year Storm	Either the SCS or the Rational Method may be used for design with Drainage Area Less than 20 Acres. Pipes shall be either RCP or Dual- Walled Corrugated HDPE ¹ .
Driveway Culverts:	2-Year	Minimum pipe diameter shall be 15 inches. Type may be CMP, RCP or HDPE.
Other:	10-Year, 24-Hour Duration Storm	Any Stormwater Management or Erosion and Sediment Control Measure requiring storm runoff calculations not covered in the above list.

¹ Dual-Walled Corrugated HDPE - High Density Polyethylene Pipe constructed with corrugated outside wall and smooth inner wall.

TOWN OF BERWICK
TAX ACQUIRED PROPERTY ORDINANCE

1. TITLE: This Ordinance shall be known as the Town of Berwick Tax Acquired Property Ordinance.

2. AUTHORITY: This Ordinance is enacted pursuant to 30A MRSA, 3001 and 36 MRSA, 941-943.

3. PURPOSE: The purpose of this Ordinance is to provide the Selectmen authority and direction regarding properties acquired by the Town for non-payment of taxes.

4. RETENTION OF PROPERTY: The Selectmen shall retain property for the benefit of the Town if they deem it in the best interest of the Town to do so. By way of example, but not of limitation, the Selectmen might deem it in the best interest of the Town to retain property where:

1. The property has or will have recreational value or economic value to the Town.
2. The property has or will have potential for a public facility or additions to public facilities.
3. Retention of the property will provide a residence for an individual or individuals who otherwise will require public assistance from the Town.

5. REDEMPTION: If the Selectmen determine that a property should not be retained under Section 4, the property shall be offered to the taxpayer or taxpayers who lost the property. The taxpayer or taxpayers may redeem the property by paying all outstanding taxes, interest, and actual costs incurred by the Town, including an administrative cost and legal costs, mailing costs, recording fees, etc., within 60 days from the date notification is sent or delivered to the owner(s) of the property as listed in the Town's tax records. Notification may be sent to the owner(s) by certified mail, return receipt requested, or it may be delivered in hand with a return made on the copy. For the purpose of this Section, any Town official or police officer may make the delivery in hand.

6. SALE: At any point in the process, if a property is not retained by the Selectmen under Section 4, and if the property is not redeemed under Section 5, the property shall be sold by sealed bid under such terms and conditions as the Selectmen deem advisable. The Selectmen shall reserve the right to accept or reject bids in any bid process. A notice of intent to sell the property shall be published in the newspaper; shall be posted in those areas where warrants are posted; and shall be sent to the taxpayer or taxpayers who lost the property by certified mail, return receipt requested, to their last known address.

ORDINANCE TO LICENSE TEMPORARY
STREET VENDING AND MOBILE EATING PLACES

Section 1. Purpose: Authority

This Ordinance is designed to control temporary street vending within the Town of Berwick, and is adopted under the authority of 30-A M.R.S.A. 3001.

Section 2. Definitions

- A. Street Vending: Selling or offering to sell, displaying for sale, demonstrating, distributing samples of, or soliciting or taking orders for any goods or services in any street, way or public property within the Town of Berwick.
- B. Street, Way or Public Property: Any street, sidewalk, alley or path, at any park, beach, playground, parking lot or other public property within the Town, or any portion thereof, which is open for use by the public as a matter of right.
- C. Mobile Eating Place: "Mobile Eating Place" means a mobile vehicle with any extending service area, designed and constructed to transport, prepare, sell or serve food at a number of sites and capable of being moved from its serving site at any time.

Section 3. Prohibition

No person shall, in any part of a street, way, or public property within the Town of Berwick, Maine, be engaged in the business of "street vending" or the operation of a "mobile eating place", as defined in this Ordinance, without a written permit to do so from the Board of Selectmen of the Town of Berwick or its designee.

The Board of Selectmen or its designee may, ~~in its sole discretion,~~ grant a written permit to any person, persons or corporation to carry on the above referenced activities personally or by its employees in any of said public places on a temporary basis provided that it does not interfere in any way the health, safety and welfare of the inhabitants of the Town, and does not otherwise create a public nuisance. A fee of \$10 will be charged for the issuance of said permit.

The Board of Selectmen or its designee may revoke said permit, in writing, any time it deems it necessary to provide for the health and safety of the citizens of the Town of Berwick, Maine, or if any conditions on the permit are not fully met. After receiving notification of any such revocation, the permittee may request a hearing before the Board.

The following organizations/individuals are exempt from the provisions of this Ordinance: National non-profit service clubs (such as Rotary International, Kiwanis, Lion's Clubs) religious groups, municipal departments, and historical societies.

Section 4. Penalty

Any person, firm, corporation or other entity violating any provision of this Ordinance shall be fined not less than \$50.00 or more than \$200.00 for each offense. A separate offense shall be deemed to have been committed on each day during or on which a violation occurs or continues. Any fines or penalties recovered under this Section shall be paid to the Town of Berwick.

Adopted: November 5, 2002

Revised: May 13, 2003

Certification of Proposed Ordinance
(30A MRSA 3002)

We, the undersigned Municipal Officers of the Town of Berwick, hereby certify to the Municipal Clerk of the Town of Berwick that the Ordinance entitled:

An Ordinance to Amend the Ordinance to License Temporary Street Vending and Mobile Eating Places (Attachment D)

attached hereto is a true copy of the proposed Ordinance to be acted upon at the Annual Town Meeting to be held on May 13, 2003 in Berwick.

Dated this 8th day of April, 2003 at Berwick, Maine.

G. Wayne Almond
Osam C. Howe
Margaret A. Wheeler
Thomas H. Lunn
Eleanor M. Murphy
A Majority of the Board of
Selectmen of the Town of Berwick

A True Copy

ATTEST:

Judith Buckman
Town Clerk of Berwick, ME

Adopted
5/13/2003

Town of Berwick Littering and Animal Waste Ordinance

1. Authority

This ordinance is enacted under Town of Berwick's home rule land use ordinance enactment authority pursuant to 30-A M.R.S. § 3001. Penalties established hereunder are established on the basis of authority granted to the Town 30-A M.R.S. § 3001 (4).

2. Purpose

The purpose of this ordinance is to prohibit waste and litter from being discarded improperly within the limits of the Town of Berwick. This behavior endangers the public health and negatively impacts the free utilization and enjoyment of the Community.

3. Definitions

Animal Waste: Waste matter eliminated from the bowels; excrement, feces, etc.

Litter: Any discarded, used or consumed substance or waste material, whether made of any metal, glass, plastic, rubber, paper, synthetic material or combination of materials, including, but not limited, to any bottle, can, jar, unlit or discarded cigarette, unlit or discarded cigar, match or any flaming or glowing material or any garbage, trash, refuse, debris, rubbish, grass clippings, brush or garden waste, newspaper, magazines, glass, metal, plastic or paper containers or other packaging or construction material.

Litter Receptacle: A container suitable for the depositing of litter, including, but not limited to trash cans and recycling bins.

4. Prohibitions

A. Litter

No person shall throw, drop, deposit, discard, dump or otherwise dispose of or discard litter in any manner or amount:

1. In or on any public highway, road, street, alley, public right of way or other public lands or upon any privately owned property except when placed in designated litter receptacles.
2. In any fresh water lake, river, or stream, or on ice over these waters. When litter is thrown or discarded from a water craft, both the operator of the watercraft and the person actually disposing of the litter are in violation of this Ordinance.
3. From a trailer or vehicle that is constructed, loaded or uncovered in such a way that the load may drop, sift, leak or otherwise escape. This provision applies to vehicles or trailers carrying trash, rubbish or other materials that may be

considered as litter. For any violation of this subparagraph, both the operator of the vehicle and any other person responsible for the litter are in violation of this Ordinance. Any litter from a commercial vehicle shall be deemed to have been done for a commercial purpose.

4. No person shall throw or deposit any commercial or noncommercial leaflet in or upon any vehicle. It shall not be unlawful for a person to hand distribute to another person, without any charge, any noncommercial leaflet or other literature provided that the recipient is willing to accept said materials.

B. Disposal of Animal Waste

An owner, caretaker, or other person responsible for an animal must remove and dispose of any animal waste any feces left by an animal on any sidewalk, street, public property through use of a plastic bag or similar container. This subparagraph does not apply to animal waste produced on private property provided that the owner of such private property consents to the same, nor does it apply to any person who, by reason of any mental or physical handicap, is unable to comply with the requirement of this subparagraph.

5. Penalties and Fines

Any law enforcement officer shall have authority to enforce the provisions of this Ordinance. Fines and penalties shall be imposed in the following manner:

A. A person who disposes of less than 15 pounds or less than 27 cubic feet of litter is subject to a fine of not more than \$500 nor less than \$50 for the first violation and not more than \$1000 nor less than \$500 for any subsequent violations. A person charged with a first violation of less than 15 pounds or less than 27 cubic feet of litter may waive all court action by payment of a fine at the municipal offices within 30 days of the alleged violation.

B. A person who disposes of more than 15 pounds or more than 27 cubic feet of litter is subject to a fine of not more than \$1000 nor less than \$500 for the first violation and not more than \$2000 nor less than \$1000 for any subsequent violations.

C. A person who disposes of more than 500 pounds or more than 100 cubic feet of litter for commercial purposes is subject to the penalties under 38 M.R.S. § 349.

D. A law enforcement officer may require the offending party to remove unlawfully discarded litter or animal waste and dispose of it in an approved manner in lieu of penalty with a written warning.