2017

Town of Perry Maine Ordinances

Perry, Me.

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Regulations for the taking of alewives shall be as follows:

- A minimum unobstructed opening of two feet (2') shall be maintained at all times between the riverbank and the downstream end of the weir.

- The maximum mesh size of wire, twine, or other material used in the weir shall not exceed one inch by one inch (1"x1").

- There shall be a 72-hour weekly closed season on alewives from sunrise each Thursday morning until sunrise the following Sunday morning. During the closed season, a minimum size unobstructed opening of three feet by three feet (3'x3') shall be maintained in the upstream and downstream end of the trap to allow escapement of spawning alewives and other migratory fish.

- Migratory fish such as salmon, shad, or other species except alewives and blueback herring that enter the trap shall be removed and allowed to pass upstream.

- Fishing operations shall cease and all fishing gear obstructing the passage of fish shall be removed from the fishing waters not later than June 5.

- The total landings in pounds or bushels and value of the catch shall be made available to the Maine Department of Marine Resources and/or National Marine Fisheries Service on request by these agencies.

Additional Regulations
For Streams with Atlantic Salmon Runs

- The entrance to the dipping pen or trap shall be covered by bars, slats, or spacers with a maximum width of two inches (2") between said bars, slats or spacers.

- Dipping of alewives shall be confined to the dipping pen or trap.
Town of Perry

Building and Site Review Ordinance

Adopted: August 18, 2014
PART I: RESIDENTIAL BUILDING PERMIT ORDINANCE

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SECTION 1 - PURPOSE
The purpose of this ordinance is to assure compliance with existing state and local regulations governing land use and subsurface wastewater disposal; secure the comfort, convenience, safety, health and welfare of the people of the Town of Perry; and protect the environment and to promote the development of an economically sound and stable community.

SECTION 2 - AUTHORITY
This Ordinance is enacted pursuant to the Home Rule provisions of the Constitution of the State of Maine and the Home Rule and Police Power Statutes of the State of Maine.

SECTION 3 - APPLICABILITY
The provisions of this Ordinance shall apply, except as noted in A through D, to all new construction, modular homes, new and re-located mobile homes, communication towers, major reconstructions as defined in Section 17, additions, existing buildings with a proposed change to residential use, and all other relocations in the Town of Perry. This Ordinance shall apply to new structures and additions located in the Shoreland Zone. This ordinance shall NOT apply to:
A. Normal building maintenance such as painting, roofing, foundation repair, replacement of windows, doors, siding, flooring and minor reconstructions as defined in Section 17,
B. Temporary structure, temporary garages, and temporary storage sheds, as defined in Section 17,
C. Ramps solely to provide handicap access, or
D. Accessory structures and decks with an area of less than or equal to 100 square Feet.
Questions as to the necessity of securing a permit shall be directed to the Code Enforcement Officer.

SECTION 4 – NON – CONFORMING USES
A. Buildings and land uses lawful at the time of adoption or amendment of this Ordinance may continue even though such uses do not conform to the provisions of this Ordinance.
B. A non-conforming building or use may be maintained or improved, but the area in non-conforming use may not be extended or expanded except in conformity with the provisions of this Ordinance.
C. A non-conforming building or use that is removed may not be replaced unless a waiver is granted under the provisions of Section 18 of this Ordinance.
SECTION 5 - EFFECTIVE DATE
The Building Ordinance shall supersede all former ordinances and shall become effective immediately after approval by the voters of the Town of Perry.

SECTION 6 - CONFLICT WITH OTHER ORDINANCES
Where the provisions of this Ordinance conflict with this or any other ordinance, the stricter standard shall apply.

SECTION 7 - VALIDITY AND SEVERABILITY
Should any section or provision of this Ordinance be declared invalid, such invalidity shall not void or make invalid any other section of this Ordinance.

SECTION 8 - AMENDMENT
This Ordinance may be amended by a majority vote of any legal Town Meeting when such amendment is published in the Warrant calling for such meeting.

SECTION 9 - ADMINISTRATION AND REQUIREMENTS
A. Authority - The Code Enforcement Officer shall administer provisions of this Ordinance.

B. Permits
1. Permit Required - No person shall authorize or undertake any applicable work as defined in Section 3 of this Ordinance without first obtaining a permit from the Town. All applications for permits required by this ordinance shall be made in writing. The application for permits shall be in a form as the Planning Board shall prescribe and shall contain the following:
   a. Name, address, e-mail address and phone number of applicant
   b. Tax map and lot number
   c. Location of work
   d. Whether or not proposal is within Shoreland Zone or within a Resource Protection Area.
   e. Use of structure.
   f. The number of bedrooms
   g. Contractor name, address, and phone number
   h. A sketch plan containing
      • The exterior dimensions of all proposed structures including decks
      • Distances from structures to property lines and roads, and driveway entrance locations.
      • Existing and proposed location of wells and subsurface wastewater systems
      • Parking areas
The applications shall be filed with the Code Enforcement Officer (CEO) prior to the start of any work. If the application is for work within the Shoreland Zone then the application shall be filed with the Code Enforcement Officer (CEO) and reviewed by the Planning Board. The Planning Board may act to approve the work, disapprove, or approve with conditions. A permit is valid only for the named applicant and is transferable only as originally approved, with the notification of the new owner to the CEO and approval of the CEO.

2. **Requirements for permitting** - The Code Enforcement Officer shall grant a building permit provided:
   a. A driveway entrance permit has been obtained from Maine DOT for a proposed driveway entering a state road (MRSA Title 30-A. Chapter 185. §4103.3D),
   b. A driveway application has been obtained from the selectmen for a proposed driveway entering a town road or private road in subdivisions.
   c. Wastewater disposal is permitted, adequately sized, and meets the state plumbing code.
   d. The building site has been inspected as required in Section 12 of this Ordinance.
   e. Setbacks for structures - A minimum setback of 15 feet from property lines and 25 feet from the edge of the right of way of any town and state road or private road within a subdivision shall be maintained for all new structures and structure additions permitted as of the effective date of this ordinance, except setback distances for reconstructions or replacements of structures that existed prior to the effective date of this ordinance shall meet these setback distances to the greatest extent practical. Where the road right of way cannot be established, a required setback of 50 feet measured from the centerline of the traveled road shall be used.
   f. Principal structures shall be prohibited on lots created after July 22, 1987, containing less than 30,000 square feet or less than 150 feet of road frontage.
   g. Principal structures containing more than two dwelling units shall be allowed only on lots containing an additional 15,000 square feet for the third and each additional unit.
   h. Accessory structures shall be permitted on lots containing less than 30,000 square feet provided such structure shall have no provisions for plumbing facilities and shall contain no more than 450 square feet in total area.
   i. Setbacks for subsurface wastewater disposal systems – A minimum setback of 25 feet from property boundaries shall be maintained for all new subsurface wastewater disposal systems including the leach field and septic tank. Replacement systems shall meet this setback requirement to the greatest extent practical.
j. A building permit shall not be issued prior to obtaining required permitting from the Planning Board for Shoreland Zoning, Subdivision or Site Review, and required state and federal permitting. If the proposed construction or alteration is in conflict with this ordinance a permit shall not be issued until such conflict has been removed. A building permit shall not be issued within any subdivision that is not in compliance with all local ordinances and state laws.

3. Additional requirements for manufacturing housing. - A permit to place a manufactured housing unit (as defined in Title 10 M.R.S.A. Chapter 951 §9002 and §9061) on individual housing lots, on undeveloped lots where single-family dwellings are allowed shall be issued only if the following conditions have been met:
   a. The manufactured home must have a pitched roof prior to being located on-site. A pitched roof is defined as a roof with a pitch of 2 or more vertical units for every 12 horizontal units of measurement, and which is covered with asphalt or fiberglass composition shingles or other materials.
   b. The permit applicant provides proof of payment of property taxes on any mobile moved from another town in the municipality where the home was formerly located (MRSA, Title 30-A, Chapter 185, §4103.3C)

4. Procedure for Administering Permits – All permit applications shall be approved or denied in writing as soon as practical but not more than ten (10) days after receiving a completed application, unless the application is within the Shoreland Zone. If within the Shoreland Zone, the application shall be filed with the Code Enforcement Officer or the Planning Board for review by the Planning Board and accompanied by a non-refundable processing fee for the application. Within thirty (30) days of the filing of an application, the Planning Board shall notify the applicant, in writing, either that the application is a complete application or, if the application is incomplete, the specific additional material needed to make a complete application. After the Planning Board has determined that a complete application has been filed, it shall notify the applicant, in writing, and begin its review of the proposed development. Permits shall not be denied if found to be in conformance with this Ordinance except permits not issued within seven days of receiving an application are automatically denied. Permits may be subjected to reasonable conditions to insure conformity of this Ordinance and other local and state laws. If a permit is denied, the reasons for denial will be stated in writing. An appeal from any approval or denial shall be made within 30 days of the approval or denial. If approved then the applicant will be charged a Building Permit Fee.

5. Term of Permit - All building permits shall be void unless significant progress is commenced within two (2) years from the date of approval.

6. Permit Modification - Any modifications to the description or scope of the project above and beyond minimal changes shall require a revised permit application.
payment of an additional one-half of the application fee, and an updated permit prior to beginning the work.

7. Permit Fees - The Selectmen will set Permit fees for construction within the Town of Perry. The Planning Board shall make recommendations to the Selectmen. The fee structure will be reviewed annually by both bodies and posted.

Fees shall be paid to the Municipal Treasurer. If any person, including any owner, and contractor, or any authorized agent, fails to obtain any permit in accordance with the Ordinance until after the work has begun, then the fees set forth above shall be three (3) times the regular permit fee, in addition to any enforcement action that may be taken.

SECTION 10 - EROSION CONTROL
Under the authority of the Maine Erosion and Sediment Control Law (Title 38, Chapter 3 §420-C), the Code Enforcement Officer shall require erosion control measures, whenever filling, displacing, excavating or exposing soil and earthen materials will occur at the building site. All erosion control methods shall be consistent with DEP’s Maine Erosion and Sediment Control Best Management Practices Manual for construction sites (DEPLW0588, March 2003) or any updated version of this document. Erosion control measures must be in place before construction and any disturbance of soil begins and must remain in place until the site is permanently stabilized.

SECTION 11 - OFF-ROAD PARKING
1. At least two (2) off-road parking spaces shall be provided per dwelling unit for all residential structures.

2. Parking spaces and Driveways shall not be located closer than ten (10) feet from any lot line, and shall be designed so as to minimize backing or maneuvering in a public road.

SECTION 12 - INSPECTIONS AND OCCUPANCY
An inspection of the site will be made by the Code Enforcement Officer prior to issuing a building permit to assure compliance with driveway entrance distances, if applicable, and to determine the necessary erosion control measures whenever filling, displacing, excavating or exposing soil and earthen materials will occur at the building site.

Before any building can be occupied as a residential dwelling, it must have the inspection and approval of the Code Enforcement Officer to assure that:

1. There is an approved method for on-site wastewater disposal installed with a minimum of one working toilet and sink.
2. The inspections required for internal plumbing and subsurface wastewater disposal have been completed and approved by the Local Plumbing Inspector.

3. Proof is provided that all electrical wiring in a newly constructed residence has been installed or inspected by a master electrician, state electrical inspector, or an appropriate state certified electrical inspector.

4. Erosion control measures are consistent with requirements stated in Section 9 of this Ordinance.

5. For structures that are going to be leased or rented, there shall be installed a permanent heat source. Smoke detection and carbon monoxide detection systems shall be installed in compliance with Maine Revised Statute Title 25, M.R.S.A.317, §§ 2464 and 2468.

6. New homeowners shall be required to place in a location visible to the road, numerals four inches (4") in height to identify the building for emergency purposes. If applicable, the mailbox of the residence will have identifying numerals on both sides of at least four inches (4") in height, and

7. Overall conditions of safety and sanitation are met.

An occupancy certificate shall be issued. Buildings occupied without the required inspection shall be subject to enforcement action as indicated in Section 13 of this Ordinance.

SECTION 13—ENFORCEMENT
The Code Enforcement Officer shall enforce this ordinance and initiate all procedures and actions through the Municipal Officers. Any person found guilty of violating any provision of this ordinance you may be subject to a fine of not less than $100.00 for each offense nor more than $2,500.00. Each day such violation exists shall constitute a separate offense. All fines shall be paid to the Town of Perry. Such persons shall also be liable for court costs and reasonable attorney fees incurred by the Town of Perry in the event of the necessity of such actions.

SECTION 14 - RIGHT OF ENTRY
The Code Enforcement Officer or his/her assistant, in the performance of his/her duties, may enter any building during construction for the purpose of making the inspection required by this code with proper notification to the owner(s).

SECTION 15 - APPEAL
Appeal for the decision of the Code Enforcement Officer or the Planning Board shall be made to the Board of Appeals and from the Board of Appeals to Superior Court. Such appeal shall be filed within thirty (30) days of the date of the order being appealed.
SECTION 16 - REPEAL
With the enactment of this ordinance, the Land Use and Development Ordinance of July 22, 1987 as amended is repealed.

SECTION 17 - WAIVERS
The Planning Board may modify or waive any of the Section 9 part B “Permits” when it determines in writing that because of the special circumstances of the site such standards would not be applicable or would be an unnecessary burden upon the applicant, and that such waiver would not adversely affect the abutting land owners and the general health and welfare of the Town.

SECTION 18 - DEFINITIONS
1. Addition – A change in the existing building footprint or volume as measured from the exterior of the building.
2. Bedroom – Any room within a residential dwelling unit that has two means of egress or any room that is used or designed to be used as primarily as sleeping quarters.
3. Driveway – A vehicular access way less than five hundred (500) feet, horizontal distance, in length serving two residential dwelling units or fewer.
4. Major Reconstruction - The replacement or alteration of an existing building or part thereof, which results in an estimated fair market value of $1000 or more for the replacement or alteration excluding normal building maintenance. The actual cost of materials may be substituted for fair market value when it is difficult to determine the fair market value.
5. Minor Reconstruction – The replacement or alteration of an existing interior or exterior part of the building, without changing the building footprint or volume, which results in an estimated fair market value of less than $1000 for the replacement or alteration. The actual cost of materials may be substituted for fair market value when it is difficult to determine the fair market value.
6. Residential Dwelling Unit – A room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time and containing cooking, sleeping, and toilet facilities regardless of the time period rented. Recreational vehicles are not residential dwelling units.
7. Setback – The minimum horizontal distance from a lot property line or the edge of a road right of way to the nearest part of any new structure.
8. Temporary Structure, Garage or Storage Shed – A building without a permanent foundation that is primarily constructed of materials other than wood or masonry products.
PART 2: COMMERCIAL SITE REVIEW

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SITE REVIEW ORDINANCE

SECTION I. - PURPOSE

The purpose of this Site Plan Ordinance is to promote public health, safety, and general welfare by requiring plans to be submitted to, reviewed, and approved by the Planning Board. The purpose of such review shall be to ensure orderly, beneficial, and environmentally sound development and the most appropriate use of land.

SECTION II. - APPLICABILITY

A. This Ordinance shall apply to all new uses, and structures, new construction, alterations and substantial enlargement to existing uses and structures for commercial, retail, industrial, and institutional purposes. This Ordinance does not apply to detached single and two-family dwelling units, multiple family dwelling units consisting of three (3) or more units along with accessory uses and structures thereof, accessory structures within the shoreland zone, agricultural land management or forest land management practices, or home occupations, or temporary structures, temporary garages, and temporary storage sheds, as defined in Section XIX.

B. This Ordinance shall also apply to any commercial, retail, industrial or institutional activity that commenced prior to the adoption of this Ordinance and is discontinued for more than 90 (ninety) calendar days.

C. This Ordinance also applies to any seasonal, commercial, retail, industrial or institutional activity which commenced prior to the adoption of this Ordinance and is discontinued for more than 1 (one) year.

SECTION III. - AUTHORITY

The Planning Board is authorized to review and act on site plans for both Minor and Major developments as defined below in “Classification of Projects”.

In considering Site Plans under this section, the Planning Board may act to approve, disapprove, or approve the project with conditions as are authorized by these provisions.

SECTION IV. - CLASSIFICATION OF PROJECTS

The Planning Board shall classify each project as a minor or major development. Minor developments are smaller scale, less complex projects for which a less complex review process is adequate to protect the Town's interest. Major developments are larger, more complex projects for which a more detailed review process and additional information may be required.
A. Minor Developments shall include:

1. Projects involving the construction of new or additions to existing buildings or structures of fewer than five thousand (5,000) square feet.
2. Projects involving the conversion of existing uses or structures five thousand (5,000) square feet or less from one use to another.

B. Major Developments shall include:

1. Projects involving the construction or addition of five thousand (5,000) or more square feet of a building or structure.
2. Projects involving the conversion of existing buildings or structures Five thousand (5,000) square feet or more from one use to another.
3. Other projects requiring review which are not classified as minor Developments.

SECTION V. - APPLICATION PROCEDURE – MINOR

A. Persons seeking Site Plan approval shall file site plans in duplicate (meeting the specifications of this Ordinance) with the Planning Board, which shall immediately refer copies of such plans to the Code Enforcement Officer. The filing of required plans with the Planning Board shall constitute filing of an application for Site Plan Review.

B. The applicant shall be required to notify, by mail, all abutting property owners that a Site Plan has been filed. Return receipts will be required to verify notification of all abutting property owners.

C. The application shall be filed with the Planning Board for review and accompanied by a fee set by the Board of Selectmen as published in the Permit Fee Schedule. Within thirty (30) days of the filing of an application, the Planning Board shall notify the applicant, in writing, either that the application is a complete application or, if the application is incomplete, the specific additional material needed to make a complete application. After the Planning Board has determined that a complete application has been filed, it shall notify the applicant, in writing, and begin its review of the proposed development.

D. On all Minor Site Review Applications the Planning Board may hold a public hearing within thirty (30) days of the filing of the completed application. The Planning Board shall publish the time, date, and place of the hearing at least two (2) times; the date of the first publication to be at least seven (7) days prior to the hearing in a newspaper of area wide circulation. The abutting landowners shall be notified of the hearing and return receipts will be required to verify their notification.
F. Public hearings by the Planning Board shall be conducted according to the procedures outlined in Title 30. M.R.S.A., §241 1, Subsection 3, (A), (B), (C), (D), and (E).

F. The Planning Board may determine that it is necessary to conduct a site visit in order to obtain firsthand knowledge of the site. Written permission for members of the Planning Board and the interested public to enter the property will be necessary. Proper public notice of the site visit must be given to interested parties and abutters since the site visit is technically a meeting. The applicant shall be required to notify all abutting property owners that a site visit is scheduled. Return receipts or signed affidavits will be required to verify notification of all abutting property owners.

G. Within thirty (30) days of the public hearing or sixty (60) days of receiving the completed application, the Planning Board shall approve, approve with conditions, or disapprove the application.

H. Within seven (7) days of reaching their decision, the Planning Board shall notify the applicant, in writing, of any action taken and the reason for taking such action.

I. All time limits provided for in this section may be extended by mutual agreement of the applicant and the Planning Board.

J. Minor changes in approved plans to address field conditions may be approved by the Code Enforcement Officer provided that such change does not affect compliance with the standards or alter the essential nature of the proposal. Any such change must be endorsed in writing by the CEO on the approved plan.

K. Approvals of site plans are dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed by the applicant. Any variation from the plans, proposals, and supporting documents, except minor changes as noted in paragraph J of this section, is subject to further review and approval.
SECTION VI. - APPLICATION PROCEDURE – MAJOR

A. Pre-application: Prior to submitting a formal application, the applicant or his/her representative shall attend a pre-application conference with the Planning Board. The pre-application meeting shall be informal and informational in nature. There shall be no fee for a pre-application review, and such review shall not cause the plan to be a pending application or proceeding under Title 1 M.R.S.A.302. No decision on the substance of the plan shall be made at the pre-application conference.

There are no formal submission requirements for a pre-application conference. However, the applicant should be prepared to discuss the following with the Board:

1. The proposed site, including its location, size, and general characteristics;
2. The nature of the proposed use and potential development;
3. Any issues or questions about existing municipal regulations and their applicability to the project; and
4. Any request for waivers from the submission requirements.

B. Persons seeking Site Plan approval shall file site plans in duplicate (meeting the specifications of this Ordinance) with the Planning Board, which shall immediately refer copies of such plans to the Code Enforcement Officer. The filing of required plans with the Planning Board shall constitute filing of an application for Site Plan Review.

C. The applicant shall be required to notify, by mail, all abutting property owners that a Site Plan has been filed. Return receipts will be required to verify notification of all abutting property owners.

D. The application shall be filed with the Planning Board for review and accompanied by a fee by the Board of Selectmen as published in the Permit Fee Schedule. Within thirty (30) days of the filing of an application, the Planning Board shall notify the applicant, in writing, either that the application is a complete application or, if the application is incomplete, the specific additional material needed to make a complete application.

E. After the Planning Board has determined that a complete application has been filed, it shall notify the applicant, in writing, and begin its review of the proposed development.
F. On all Major Site Review Applications the Planning Board may hold a public hearing within thirty (30) days of the filing of the completed application. The Planning Board shall publish the time, date, and place of the hearing at least two (2) times; the date of the first publication to be at least seven (7) days prior to the hearing in a newspaper of area wide circulation. The abutting landowners shall be notified of the hearing and return receipts will be required to verify their notification.

G. Public hearings by the Planning Board shall be conducted according to the procedures outlined in Title 30, M.R.S.A., §241 1, Subsection 3, (A), (B), (C), (D), and (E). Any public hearings by the Planning Board shall be conducted according to the procedures outlined in Title 30, M.R.S.A., §241 1, Subsection 3, (A), (B), (C), (D), and (E). Within thirty (30) days of the public hearing or sixty (60) days of receiving the completed application, the Planning Board shall approve, approve with conditions, or disapprove the application.

H. The Planning Board may determine that it is necessary to conduct a site visit in order to obtain firsthand knowledge of the site. Proper public notice of the site visit must be given to interested parties and abutters, as the site visit would constitute a public meeting. The applicant shall be required to notify all abutting property owners that a site visit is scheduled. Return receipts or signed affidavits will be required to verify notification.

I. Within seven (7) days of reaching their decision, the Planning Board shall notify the applicant, in writing, of any action taken and the reason for taking such action.

J. All time limits provided for in this section may be extended by mutual agreement of the applicant and the Planning Board. Any extensions must be documented in writing.

K. The Code Enforcement Officer may approve minor changes in approved plans to address field conditions provided that such changes do not affect compliance with the standards or alter the essential nature of the proposal. Any such changes must be endorsed in writing by the CEO on the approved plan.

L. Approvals of site plans are dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed by the applicant. Any variation from the plans, proposals, and supporting documents, except minor changes as noted in paragraph K of this section, is subject to further review and approval.
SECTION VII - SITE PLAN CONTENT - Minor

A. The Final Plan shall be drawn to scale of not less than one (1") inch equals (50') feet, and shall contain the following:

1. Name and address of owner and applicant.
2. Scale and north arrow.
3. Location, Tax Map Page and Lot Number, dimensions, and acreage of parcel to be built upon.
4. Existing contours at intervals of not more than ten (10') feet and proposed contours at intervals of not more than five (5') feet. The Board may waive this requirement or require closer contour intervals depending on the nature of the project.
5. The size, shape, and location of existing and proposed buildings, including those on adjacent lots.
6. The location and dimensions of existing and proposed parking areas, loading and unloading facilities, and points of ingress and egress of vehicles to and from the site to public streets.
7. Location of all existing and proposed easements and rights-of-way.
8. Location and size of existing and proposed wells, water and sewer mains, septic systems, culverts, and storm drains.
9. Location of natural features such as watercourses and wetlands, including those on adjacent lots.
10. Location and size of existing and proposed signs and advertising features.
11. Any other provisions contained in the Town of Perry's Subdivision Regulations or Shoreland Zoning Ordinance, whenever applicable.
12. Due to the nature of the project, the Planning Board may require one or more additional plan contents as specified in the "Site Plan Content – Major", Section VIII.
SECTION VIII - SITE PLAN CONTENT - Major:

A. The Final Plan shall be drawn to a scale of not less than one (1") inch equals (50') feet, and shall contain the following:

1. Name and address of owner and applicant.

2. Scale and north arrow.

3. Location, Tax Map Page and Lot Number, dimensions, and acreage of parcel to be built upon.

4. Existing contours at intervals of not more than ten (10') feet and proposed contours at intervals of not more than five (5') feet. The Board may require closer contour intervals depending on the nature of the project.

5. The size, shape, and location of all existing and proposed buildings, including those on adjacent lots.

6. The location and dimensions of all existing and proposed parking areas, loading and unloading facilities, and points of ingress and egress of vehicles to and from the site to public streets. Parking Layout and Design-Off-street parking must conform to the following standards:

   (a) Parking areas with more than two (2) parking spaces must be arranged so that it is not necessary for vehicles to back into the street.

   (b) All parking spaces, access drives, and impervious surfaces must be located at least five (5) feet from any side or rear lot line, except where standards for buffer yards require a greater distance. No parking spaces or asphalt type surface shall be located within five (5) feet of the front property line. Parking lots on adjoining lots may be connected by access ways not exceeding twenty-four (24) feet in width.

   (c) In lots utilizing diagonal parking, the direction of proper traffic flow must be indicated by signs, pavement markings or other permanent indications and maintained as necessary.

   (d) Parking areas for nonresidential uses must 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.

   (e) Provisions must be made to restrict the "overhang" of parked vehicles when it might restrict traffic flow on adjacent through roads, restrict pedestrian or bicycle movement on adjacent walkways, or damage landscape materials.
7. Location of all existing and proposed easements and rights-of-way.

8. Location and dimensions of all existing and proposed pedestrian access ways.

9. Location and size of existing and proposed water and sewer mains, culverts, and storm drains.

10. Location of all existing and proposed outdoor lighting.

11. Location of natural features such as watercourses, marshes, rock outcropping, and stands of trees, including those on adjacent lots.

12. Landscape Plan showing location and type of all existing and proposed plantings and screenings. Landscaping must be provided as part of site design and may include plant materials such as trees, shrubs, groundcovers, perennials, and annuals, and other materials such as rocks, water, sculpture, art, walls, fences, paving materials, and street furniture.

13. Location and size of all existing and proposed signs and advertising features.

Freestanding commercial business signs should be placed at right angles to the street so as to be viewed from both directions. Signs shall be no larger than 4' X 8'.

In urban, built-up areas commercial business signs should be placed on the building, unless visibility is impaired and a freestanding sign is the best option.

14. Any other provisions contained in the Town of Perry's Subdivision Regulations whenever applicable.

15. Due to the nature of the project, the Planning Board may require one or more additional plan contents as specified in the Site Plan Content – Major, Section VIII

B. A narrative, with supporting data, may be required to address the environmental suitability of the chosen site to support the proposed development. This may require the use of appropriate qualified professional(s). This narrative shall address the standards as listed in Section X.
SECTION IX - PERFORMANCE STANDARDS – Minor

The Site Plan shall be approved, unless the Planning Board makes a written finding that the applicant is not able to meet one or more of the following standards. In all instances, the burden of proof shall be on the applicant and such burden of proof shall include the production of evidence necessary to complete the application.

1. The provisions for vehicular loading and unloading and parking and for vehicular and pedestrian circulation on the site and onto adjacent public streets and ways will create no hazards to safety.

   Internal Vehicular Circulation - The layout of the site must provide for the safe movement of passenger, service and emergency vehicles through the site.

2. The location or height of proposed structures and the proposed uses thereof will not be detrimental to other public or private development in the neighborhood.

3. The proposed use will not impose undue burdens so as to exceed the capacity of storm drains, water, fire protection, or other public facilities.

4. The Site Plan provides sufficient information to show that storm water will be adequately drained from the site with no adverse impact on other property or publicly-owned drainage systems.

5. Soil erosion and all other adverse impacts on the soil ground water and surface water shall be prevented. Ground water shall not be adversely impacted in quality or quantity.

6. All activities relating to ground water extraction shall also comply with any duly enacted ordinances of the Town of Perry governing such uses and activities (e.g., a water ordinance).

7. The provisions for exterior lighting do not create hazards to motorists traveling on adjacent public streets and are adequate for the safety of occupants or users of the site.

8. An applicant for Site Plan approval has provided evidence of his financial capability to complete the development as planned.

9. The proposed development will not create safety hazards and will provide adequate access for emergency vehicles to the site, and to all buildings on the site.
SECTION X - PERFORMANCE STANDARDS – Major

The Site Plan shall be approved, unless the Planning Board makes a written finding that the applicant is not able to meet one or more of the following standards. In all instances, the burden of proof shall be on the applicant and such burden of proof shall include the production of evidence necessary to complete the application.

1. The provisions for vehicular loading and unloading and parking and for vehicular and pedestrian circulation on the site and onto adjacent public streets and ways will create no hazards to safety and will conform to the following:

Access to the Site:
   a. Any driveway or proposed street must be designed so as to provide the minimum sight distance according to the Maine Department of Transportation standards, to the maximum extent possible.
   b. Points of access and egress must be located to avoid hazardous conflicts with existing turning movements and traffic flows.
   c. The grade of any proposed drive or street must be not more than +3% for a minimum of two (2) car lengths, or forty feet, from the intersection.
   d. Where it is necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, the applicant shall be responsible for providing turning lanes, traffic directional islands, and traffic controls within public streets.
   e. Access ways must be designed and have sufficient capacity to avoid a back up of entering vehicles on any public street.

Access way Location and Spacing:

Access ways must meet the following standards:
   a. Private entrance/exits must be located at least fifty (50) feet from the closest un-signalized intersection and one hundred fifty (150) feet from the closest signalized intersection, as measured from the point of tangency for the corner to the point of tangency for the access way. This requirement may be reduced if the shape of the site does not allow conformance with this standard.
   b. Private access ways in or out of a development must be separated by a minimum of seventy-five (75) feet where possible.

Internal Vehicular Circulation

   a. The layout of the site must provide for the safe movement of passenger, service, and emergency vehicles through the site.
   b. Nonresidential projects that will be served by delivery vehicles must provide a clear route for such vehicles with appropriate geometric design to allow turning and backing for a minimum of a vehicle with
a wheelbase of 40 feet.

c. Clear routes of access must be provided and maintained for emergency vehicles to and around buildings and must be posted with appropriate signage (fire lane - no parking).

d. The layout and design of parking areas must provide for safe and convenient circulation of vehicles throughout the lot.

2. The location or height of proposed structures and the proposed uses thereof will not be detrimental to other public or private development in the neighborhood.

3. The provision for on-site landscaping provides adequate protection to neighboring properties from detrimental features of the development. The development must provide for the buffering of adjacent uses where there is a transition from one type of use to another use and for screening of mechanical equipment and service and storage areas.

Buffering must be designed to provide a year-round visual screen in order to minimize adverse impacts. It may consist of fencing, evergreens, berms, rocks, boulders, mounds, or a combination thereof.

A development must provide sufficient buffering when topographical or other barriers do not provide reasonable screening and where there is a need to:

- Shield neighboring properties from any adverse external effects of the development, or
- Shield the development from the negative impacts of adjacent uses.

The width of the buffer may vary depending on the treatment of the area. Within densely built-up areas, a buffer with dense plantings, fencing, or changes in grade may be as little as five (5) feet in width. A buffer with moderate levels of planting should be ten (10) feet to fifteen (15) feet in width. In suburban and rural settings, the width of the vegetated buffer should be increased to a minimum of twenty-five (25) feet. Areas adjacent to service loading or storage areas should be screened by dense planting, berms, fencing, or a combination thereof with a width of a minimum of five (5) feet.

4. The proposed use will not impose undue burdens so as to exceed the capacity of the storm drains, water, solid waste, fire protection, or other public facilities.

Storage of Materials - Exposed nonresidential storage areas, exposed machinery, and areas used for the storage or collection of discarded automobiles, auto parts, metals or other articles of salvage or refuse must have sufficient setbacks and screening (such as a stockade fence or a dense evergreen hedge) to provide a visual buffer sufficient to minimize their
impact on abutting residential uses and users of public streets.

All dumpsters or similar large collection receptacles for trash or other wastes must be located on level surfaces, which are paved or graveled. Where the dumpster or receptacle is located in a yard which abuts a residential or institutional use or a public street, it must be screened by fencing or landscaping.

5. The Site Plan provides sufficient information to show that storm water will be adequately drained from the site with no adverse impact on other property or publicly owned drainage systems.

6. Soil erosion and all other adverse impacts on the soil, ground water, and surface water shall be prevented. Ground water shall not be adversely impacted in quality or quantity. Adequate provisions must be made for the collection and disposal of all storm water that runs off from proposed streets, parking areas, roofs and other surfaces, through a storm water drainage system and maintenance plan, which must not have adverse impacts on abutting or downstream properties.

7. All activities relating to ground water extraction shall also comply with any duly enacted ordinances of the Town of Perry governing such uses and activities (e.g., a water ordinance).

8. The provisions for exterior lighting do not create hazards to motorists traveling on adjacent public streets and are adequate for the safety of occupants or users of the site.

Exterior Lighting - The proposed development must have adequate exterior lighting to provide for its safe use during nighttime hours, if such use is contemplated.

Lighting may be used which serves security, safety and operational needs provided it does not directly or indirectly produce deleterious effects on abutting properties or impair the vision of a vehicle operator on adjacent roadways. Lighting fixtures must be shielded or hooded so that the lighting elements are not exposed to normal view by motorists, pedestrians, or from adjacent dwellings and so that they do not unnecessarily light the night sky. All exterior lighting, except security lighting, must be turned off between 11 P.M. and 6 A.M. unless located on the site of a commercial or industrial use that is open for business during that period.

9. An applicant for Site Plan approval has provided evidence of his financial capability to complete the development as planned. This could include a letter of support from an accredited financial institution or some other means of documenting financial solvency.

10. The proposed development will not create safety hazards and will provide
adequate access for emergency vehicles to the site, and to all buildings on the site.

11. The proposed development will not adversely affect the use and enjoyment of abutting property as a result of noise, vibrations, fumes, odor, dust, glare, or other cause.

SECTION XI - PERMITS

A. Permits required: After the effective date of this ordinance, no person shall engage in any use or construct, alter, or substantially enlarge any structure to which this Ordinance applies without first obtaining a permit. Following the issuance of a permit, if no substantial start is made in construction (completion of the exterior shell) or in the use of the property within one year of the date of permit, the permit shall lapse and become void. The Planning Board may grant up to two (2), six (6) month extensions to the periods if the approved plan conforms to the ordinance in effect at the time the extension is requested and all federal, state and local approvals and permits are current. The permittee's request for an extension must be received at least 30 days prior to the expiration of the permit and include explanations for the request.

B. Permits expire for uses or structures that are discontinued for more than 90 days, unless the permittee can demonstrate that the discontinuance was for factors beyond his/her control.

C. Permits expire for seasonal uses or structures that are discontinued for more than 1 (one) year, unless the permittee can demonstrate that the discontinuance was for factors beyond his/her control.

D. A permit is valid only for the named applicant and is transferable only as originally approved, with the notification of the new owner to the CEO and approval of the Planning Board.

SECTION XII - GENERAL PROVISIONS

A. The Planning Board may modify or waive any of the above application requirements or Performance Standards when the Planning Board determines that, because of the special circumstances of the site or the nature of the project, such application requirements or standards would not be applicable or would be an unnecessary burden upon the applicant, and when such waivers would not adversely affect the abutting land owners and the general health, safety, welfare, and environment of the Town.

B. The Planning Board may require proof of ownership of the site or written authority from the owner verifying the applicant's right, title, and interest to develop the site.
C. The Planning Board may require the filing of a Performance Bond or the execution of a conditional agreement with the municipality by the applicant.

D. All construction performed under the authorization of a building permit or certificate of occupancy issued for development within the scope of this Ordinance shall be in conformance with the approved Site Plan.

SECTION XIII - ADMINISTRATION

A. The Planning Board of the Town of Perry shall administer this Ordinance.

B. No building permit or plumbing permit shall be issued by the Planning Board or Code Enforcement Officer for any use or development within the scope of this Ordinance until a Site Plan has been reviewed and favorably acted upon by the Planning Board.

SECTION XIV. ADMINISTRATIVE APPEALS

An aggrieved party may appeal any decision of the Board or the Code Enforcement Officer under this Ordinance to the Town of Perry Board of Appeals within thirty (30) days from the date of the written notice of such decision.

SECTION XV. VIOLATION, ENFORCEMENT, AND FINES

A. Code Enforcement Officer (CEO): It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the CEO shall find that any provision of this Ordinance is being violated, he or she shall notify, in writing, the person(s) responsible for such violation. The notification will indicate the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, building, structure, or work being done, removal of illegal building or structure, and abatement of nuisance conditions. A copy of such notice shall be maintained as a permanent record.

B. Legal Action: 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 CEO, are hereby authorized and directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunction of violation and the imposition of a fine that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the municipality.

C. Fine: Any person who continues to violate any provision of this Ordinance, after receiving notice of such violation, shall be guilty of a misdemeanor subject to a fine of up to $100 for each violation. Each day such a violation is continued is a separate offense.
SECTION XVI - VALIDITY AND SEVERABILITY AND CONFLICT WITH OTHER ORDINANCES.

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

B. Conflict with Other Ordinances: Whenever the requirements of this Ordinance are inconsistent with the requirements of any other ordinance, code, or statute, the more restrictive requirements shall apply.

SECTION XVII. AMENDMENTS

This Ordinance may be amended by a majority vote of the Town meeting. Amendments may be initiated by a majority vote of the Planning Board, or by request of the Board of Selectmen to the Planning Board, or on petition of ten (10%) percent of the votes cast in the last gubernatorial election in the Town. The Planning Board shall conduct a public hearing on any proposed amendment.

SECTION XVIII. EFFECTIVE DATE

The effective date of this ordinance is xxxxxxxxx. The first effective date was xxxxxxxxxx. Past amendments have been accepted in xxxxxxxx.

SECTION XIX. DEFINITIONS

A. Accessory Use or Structure: A subordinate use of a building, other structure, or land, or a subordinate building or other structure:

1. Whose use is customary in connection with the principal building, other structure or use of land; and
2. Whose use is clearly incidental to the use of the principal building, other structure, or use of land; and
3. Which is located on the same lot with the principal building, other structure, or use of land, or on a lot adjacent to such a lot if in the same ownership.
4. Is part of the same establishment.

B. Agricultural Land Management Practices: Those devices and procedures utilized in the cultivation of land in order to further crop and livestock production and conservation of related soil and water resources.

C. Alteration: Structural changes, rearrangement, change of location, or addition to a building or structure other than repairs and modification in building equipment involving more than twenty-five (25%) percent
increase in the overall floor space, or bulk of the building, or structure at any time or in total since the effective date of this Ordinance.

D. Building: Any structure having a roof or partial roof supported by columns or walls used for the shelter or enclosure of persons, animals, goods, or property of any kind. A building shall include a multiple family dwelling.

E. Commercial: Connected with the buying or selling of goods or services or the provision of facilities for a fee.

F. Discontinuance: Cessation of use.

G. Dwelling Unit: A room or group of rooms designed and equipped exclusively for use as living quarters for one family including provisions for living, cooking, and eating.

H. Forest Management Activities: Includes timber cruising and other forest resource evaluation activities, pesticide application, timber stand improvement, pruning, timber harvesting and other forest harvesting, regeneration of forest stands, and other similar associated activities, but not the construction, creation of maintenance of land management roads.

I. Home Occupations: Home occupation means an occupation conducted within a dwelling unit by a resident thereof which is customarily incidental and secondary to the residential use of the unit which such use does not occupy more than fifty (50%) percent of the dwelling unit devoted to living quarters, except that the area devoted to living quarters shall not be reduced below six hundred (600) square feet by this subsection; which requires no display of goods, no stock in trade, no commodity sold on the premises; not more than two (2) non-residents of the dwelling unit employed, and which does not interfere with the peace and quiet of the neighborhood. The office of a doctor or dentist shall be considered as a home occupation provided that it conforms to the restrictions set forth above.

J. Industrial: Connected with the assembling, fabrication, finishing, manufacturing, packaging or processing of goods or the extraction of minerals.

K. Institutional: A building devoted to some public, governmental, educational, charitable, medical, or similar purpose.

L. Multiple Family Dwelling: A building consisting of three (3) or more attached dwelling units designed and intended for long-term occupancy, rather than temporary occupancy as with a hotel or motel.

M. Persons: Means any person, firm, association, partnership, corporation, municipal, or other local government entity, quasi-municipal entity, state agency, educational, or charitable organization or institution or other legal
entity.

N. Recreational Vehicle: A vehicle or vehicular attachment 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, or motor home.

O. Retail: Connected with the sale of goods to the ultimate consumer for direct use and consumption and not for trade.

P. Seasonal: Less than or equal to seven (7) months of use.

Q. Structure: Anything constructed, erected, or placed in or on the ground, the use of which requires location on the ground or attachment to something on the ground, including but not limited to buildings, mobile homes, recreational vehicles, piers, floats, recreation areas, and parking lots. Boundary walls and fences are not included under this regulation.

R. Substantial Enlargement: An expansion of the land area of the development site, volume or square footage of buildings, addition of fixtures or equipment involving more than twenty-five percent (25%) increase in floor space, or the volume of activity by more than twenty-five (25%) percent, at any one time or in total since the effective date of this Ordinance.

S. Substantial Start: Completion of thirty (30%) percent of a permitted structure or use measured as a percentage of the estimated total cost. Exterior walls and roof must be completely closed in and finish applied.

T. Temporary Structure, Garage or Storage Shed: A building without a permanent foundation that is primarily constructed of materials other than wood or masonry products.

This Ordinance is respectfully submitted to the Selectmen of the town of Perry on 8th of May 2014 to present to the Town of Perry Citizens for approval at the next Town Meeting.

Perry Planning Board.
Gerald Morrison – Chairman
William Newcomb – Vice Chairman
H. Richard Adams
Robert Costa
Linda Newcomb
Article XX. EFFECTIVE DATE

This ordinance shall become effective immediately upon its adoption and enactment by a majority at a Town Meeting of registered voters of Perry. Any modifications of this ordinance shall be done by a majority vote at a Town Meeting.

I certify the foregoing ordinance was duly adopted at the Town Meeting dated August 18, 2017.

[Signature]
Town Clerk
Cable Television System Ordinance

An Ordinance providing for Town regulation and use of the cable television system including its construction, operation and maintenance in, along, upon, across, above, over and under the streets, alleys, public ways, and public places now laid out or dedicated, and all extensions thereof and additions thereto in the Town of Perry including poles, wires, cables, underground conduits, manholes, conductors and fixtures necessary for the maintenance and operation in the Town of Perry of the cable television system and to provide conditions accompanying the grant of franchise; and providing for Town of Perry regulation of CATV operations.

Section 1. Definitions

(a) “C.A.T.V.” shall mean any cable television system or facility that, in whole or in part, receives directly or indirectly, over the air, and amplifies or otherwise modifies signals transmitting programs broadcast, by one or more television or radio stations, or originates its own signal or signals by wire or cable to subscribing members of the public who pay for such services, but such term shall not include any such facility that serves only the residents of one or more apartment dwellings under common ownership, control or management.

(b) “Cable Television Company” shall mean any person, firm or corporation owning, controlling, operating, managing or leasing a CATV system within the Town of Perry sometimes hereinafter referred to as “the company.”

(c) “Town” shall mean the Town of Perry, Maine, a municipality organized and existing under the laws in the State of Maine and the area within its territorial limits.

Section 2. Franchise Required

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

Section 3. Franchise Contract Authority and Procedure

(a) The Municipal Officers of the Town may contract on such terms, conditions and fees as are in the best interests of the municipality and its residents with one or more Cable Televisions Companies for the operation of a CATV system throughout the Town of Perry, including the granting of a franchise or franchises for the operation thereof for a period not to exceed fifteen (15) years. Such a franchise or franchises shall be non-exclusive.
(b) Applicants for a franchise shall pay a non-refundable filing fee to the Town of Perry to defray the cost of public notice, and advertising expenses relating to such application. The applications shall be filed with the Town Clerk and shall contain such information as the Town of Perry may require, including but not limited to a general description of the applicant's proposed operation, a schedule of proposed charges, a statement detailing its business or corporate organization with a financial statement for the two previous fiscal years, an estimated fifteen (15) year financial projection of its proposed system and its proposed annual town franchise fee or the basis for same, and a statement detailing the prior operational experience of the applicant in both CATV and Microwave service including that of its officers, management and staff to be associated with the proposed operation.

(c) Any franchise agreement entered into or renewed under this ordinance may be revoked by the Board of Selectmen for good and sufficient cause after due notice to the Cable Television Company and a public hearing thereon; with the right to appeal to the Washington County Superior Court under Rule 80B of the Maine Rules of Civil Procedure.

(d) Prior to the preparation by the Town of Perry of requests for proposals for franchises or renewals thereof the Town shall hold a public hearing, with at least seven days' notice by publication in a newspaper of general circulation within the Town of Perry, to solicit public comment regarding special local needs and interests with respect to cable television services.

(e) Before authorizing the issuance of any such franchise agreement or agreements the Board of Selectmen shall review the applicant's character, financial and technical qualifications and the adequacy and feasibility of its qualifications to operate a CATV system throughout the Town of Perry, and shall conduct a public hearing thereon with at least seven days advertised notice prior to said public hearing.

(f) Upon the execution of any such franchise agreement the Cable Television Company shall file a surety company performance bond in the amount of $100,000 conditional upon the faithful performance of said contract and full compliance with any laws, ordinances, or regulations governing said franchise, and also evidence of such public liability insurance coverage as the Board of Selectmen may require. Said performance bond shall be reduced to $50,000 upon the completion of the installation of said system as per said contract.

(g) Applications for a franchise to operate a CATV system in the Town of Perry and related documents are public records maintained by the Town Clerk pursuant to the State Freedom of Access Law (1 M.R.S.A. ss. 401 et seq. as amended from time to time) and the public has the right to inspect and copy such applications and documents during the regular business hours of the Town of Perry Clerk's office.

**Section 4. Franchise Agreement Contents**

Any franchise agreement entered into after the effective date of this ordinance, and any renewal of a franchise agreement, which renewal is entered into after the effective date of this ordinance, between the Town of Perry and any Cable Television Company, shall be nonexclusive and shall contain the following provisions:
(a) A statement of the area or areas to be served by the Cable Television Company;

(b) A line extension policy;

(c) A provision for renewal, the terms of which may not exceed 15 years;

(d) Procedures for the investigation and resolution of the complaints by the Cable Television Company;

(e) Provision for access to, and facilities to make use of, one or more local public, educational and governmental access channels; and

(f) Any other terms and conditions that are in the best interests of the Town of Perry.

Section 5. Amendment

The Board of Selectmen as the Municipal Officers of the Town shall have the exclusive power to enact and amend this Ordinance. The Town of Perry's Board of Selectmen shall provide at least seven days' notice of any hearing on the proposed amendment to this Ordinance, and notice of such hearings shall be provided by publication in a newspaper of general circulation within the Town of Perry as well as by the posting of an attested copy in some conspicuous, public place in the Town of Perry together with a return on the notice in accordance with 30-A M.R.S.A. ss 2523 as amended from time to time. Pursuant to 30-A M.R.S.A. ss 3008, such amendments shall become effective immediately.

Section 6. Compliance with all Laws

Cable Television Companies shall at all times comply with all applicable federal, State and local laws, statutes, rules, regulations, ordinances, codes and orders.

Section 7. Severability

Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.
FLOODPLAIN MANAGEMENT ORDINANCE
FOR THE
TOWN OF PERRY, MAINE

ENACTED:  

July 10, 2017
Date

EFFECTIVE:  

July 10, 2017
Date

CERTIFIED BY:  

Signature

CERTIFIED BY:  

Janice Scanlon
Print Name
Town Clerk
Title

Affix Seal

60.3(e)
Prepared 1/13/17 by DACF/JP
# FLOODPLAIN MANAGEMENT ORDINANCE

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60.3 (e) Rev. 01/17
ARTICLE I – PURPOSE AND ESTABLISHMENT

Certain areas of the Town of Perry, 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 Perry, 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 Perry, 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 Perry 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 Perry 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 Perry, Maine.


ARTICLE II – PERMIT REQUIRED

Before any construction or other development (as defined in Article XIV), 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 except as provided in Article VII. This permit shall be in addition to any other permits which may be required pursuant to the codes and ordinances of the Town of Perry, 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.3. 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, AO, and VE from data contained in the "Flood Insurance Study - Washington County, Maine," as described in Article I; or,
   b. in Zone A:
      (1) from any base flood elevation data from federal, state, or other technical sources (such as FEMA's Quick-2 model, FEMA 265), including information obtained pursuant to Article VI.K. and IX.D.; or,
      (2) in the absence of all data described in Article III.H.1.b.(1), information to demonstrate that the structure shall meet the elevation requirement in Article VI.F.4.b, Article VI.G.4.b. or Article VI.H.4.b.

2. highest and lowest grades at the site adjacent to the walls of the proposed building;

3. lowest floor, including basement; and whether or not such structures contain a basement; and,

4. level, in the case of non-residential structures only, to which the structure will be floodproofed;

I. A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in Article VI;

J. A written certification by a Professional Land Surveyor, registered professional engineer or architect, that the base flood elevation and grade elevations shown on the application are accurate;
K. The following certifications as required in Article VI by a registered professional engineer or architect:

1. a Floodproofing Certificate (FEMA Form 81-65, as amended), to verify that the floodproofing methods for any non-residential structures will meet the floodproofing criteria of Article III.H.4.; Article VI.G.; and other applicable standards in Article VI;

2. a V-Zone Certificate to verify that the construction in coastal high hazard areas, Zone VE, will meet the criteria of Article VI.P.; and other applicable standards in Article VI;

3. a Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Article VI.L.2.a.;

4. a certified statement that bridges will meet the standards of Article VI.M.;

5. 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 nonrefundable application fee, as established annually by the Board of Selectmen shall be paid to the City/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 the 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 - Washington County, 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.(l); Article VI.K.; and Article IX.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.(l), 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 a 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, H, or P. 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.

For development that requires review and approval as a Conditional Use, as provided for in this Ordinance, the Flood Hazard Development Permit Application shall be acted upon by the Planning Board as required in Article VII.

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 X 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 VIII 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 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.
F. **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. Zone AE shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.

2. Zone AO shall have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.

3. Zone AO shall have the lowest floor (including basement) elevated above the highest adjacent grade:
   a. at least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,
   b. at least three feet if no depth number is specified.

4. Zone A shall have the lowest floor (including basement) elevated:
   a. to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.(1); Article V.B.; or Article IX.D., or;
   b. in the absence of all data described in Article VI.F.4.a., to at least two feet above the highest adjacent grade to the structure.

5. Zone VE shall meet the requirements of Article VI.P.

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

1. Zone AE shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation, or together with attendant utility and sanitary facilities shall:
   a. be floodproofed to at least one foot above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;
   b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
c. be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K. and shall include a record of the elevation above mean sea level to which the structure is floodproofed.

2. Zone AO shall have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.

3. Zone AO shall have the lowest floor (including basement) elevated above the highest adjacent grade:

   a. at least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,

   b. at least three feet if no depth number is specified; or,

   c. together with attendant utility and sanitary facilities, be floodproofed to meet the elevation requirements of this section and the floodproofing standards of Article VI.G.1.a., b., and c.

4. Zone A shall have the lowest floor (including basement) elevated:

   a. to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.(1), Article V.B.; or Article IX.D., or;

   b. in the absence of all data described in Article VI.G.4.a. to at least two feet above the highest adjacent grade to the structure; or,

   c. together with attendant utility and sanitary facilities, be floodproofed to one foot above the elevation established in Article VI.G.4.a. or b., and meet the floodproofing standards of Article VI.G.1.a.,b., and c.

5. Zone VE shall meet the requirements of Article VI.P.

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

1. Zone AE shall:

   a. be elevated such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation;

   b. be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and,
c. be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:

(1) over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by,

(2) frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).

(3) All components of the anchoring system described in Article VI.H.1.c.(1) & (2) shall be capable of carrying a force of 4800 pounds.

2. Zone AO shall have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.

3. Zone AO shall have the lowest floor (including basement) of the manufactured home elevated above the highest adjacent grade:

a. at least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,

b. at least three feet if no depth number is specified; and,

c. meet the anchoring requirements of Article VI.H.1.c.

4. Zone A shall:

a. be elevated on a permanent foundation, as described in Article VI.H.1.b., such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.(1); Article V.B.; Article IX.D.; or

b. in the absence of all data described in Article VI.H.4.a., to at least two feet above the highest adjacent grade to the structure; and

c. meet the anchoring requirements of Article VI.H.1.c.

5. Zone VE shall meet the requirements of Article VI.P.

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.

2. Zone VE shall meet the requirements of either Article VI.I.1.a and b., or Article VI.P.

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

1. have unfinished interiors and not be used for human habitation;

2. have hydraulic openings, as specified in Article VI.L.2., in at least two different walls of the accessory structure;

3. be located outside the floodway;

4. when possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and,

5. have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Special Flood Hazard Area.

K. **Floodways** -

1. In Zone AE riverine areas, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway which is designated on the community's Flood Insurance Rate Map unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

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

b. is consistent with the technical criteria contained in FEMA’s guidelines and standards for flood risk analysis and mapping.

3. In Zones AE and A 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, AO, 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 crawl spaces 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 XIV;

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, AO, AE, and VE shall be designed such that:
1. when possible, the lowest horizontal member (excluding the pilings, or columns) is elevated to at least one foot above the base flood elevation; and

2. a registered professional engineer shall certify that:
   a. the structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of Article VI.K.; and
   b. the foundation and superstructure attached thereto are designed to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.

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

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

2. Zone AO shall have adequate drainage paths around containment walls on slopes, to guide floodwater away from the proposed walls.

3. Zone AO shall have the top of the containment wall elevated above the highest adjacent grade:
   a. at least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,
   b. at least three feet if no depth number is specified; and,
   c. shall meet the requirements of Article VI.N.1.b. & c.

O. Wharves, Piers and Docks - New construction or substantial improvement of wharves, piers, and docks are permitted in Zones A, AO, AE, and VE, in and over water and seaward of the 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.

P. Coastal Floodplains -

1. All new construction located within Zones AE and VE shall be located landward of the reach of mean high tide except as provided in Article VI.P.6.

2. New construction or substantial improvement of any structure located within Zone VE shall:

   a. be elevated on posts or columns such that:

      (1) the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to one foot above the base flood elevation;

      (2) the pile or column foundation and the elevated portion of the structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components; and,

      (3) water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state and local building standards.

   b. have the space below the lowest floor:

      (1) free of obstructions; or,

      (2) constructed with open wood lattice-work, or insect screening intended to collapse under wind and water without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting piles or columns; or,

      (3) constructed to enclose less than 300 square feet of area with non-supporting breakaway walls that have a design safe loading resistance of not less than 10 or more than 20 pounds per square foot.

   c. require a registered professional engineer or architect to:

      (1) develop or review the structural design, specifications, and plans for the construction, which must meet or exceed the technical criteria contained in the Coastal Construction Manual, (FEMA-55); and,

      (2) certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the criteria of Article VI.P.2.

3. The use of fill for structural support in Zone VE is prohibited.
4. Human alteration of sand dunes within Zone VE is prohibited unless it can be demonstrated that such alterations will not increase potential flood damage.

5. The area below the lowest floor shall be used solely for parking vehicles, building access, and storage.

6. Conditional Use - Lobster sheds and fishing sheds may be located seaward of mean high tide and shall be exempt from the elevation requirement in Article VI.G. only if permitted as a Conditional Use following review and approval by the Planning Board, as provided in Article VII, and if all the following requirements and those of Article VI.A., VI.K., and VI.L. are met:

   a. The conditional use shall be limited to low value structures such as metal or wood sheds 200 square feet or less and shall not exceed more than one story.

   b. The structure shall be securely anchored to the wharf or pier to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.

   c. The structure will not adversely increase wave or debris impact forces affecting nearby buildings.

   d. The structure shall have unfinished interiors and shall not be used for human habitation.

   e. Any mechanical, utility equipment and fuel storage tanks must be anchored and either elevated or floodproofed to one foot above the base flood elevation.

   f. All electrical outlets shall be ground fault interrupt type. The electrical service disconnect shall be located on shore above the base flood elevation and when possible outside the Special Flood Hazard Area.

ARTICLE VII - CONDITIONAL USE REVIEW

The Planning Board shall hear and decide upon applications for conditional uses provided for in this Ordinance. The Planning Board shall hear and approve, approve with conditions, or disapprove all applications for conditional uses. An applicant informed by the Code Enforcement Officer that a Conditional Use Permit is required shall file an application for the permit with the Planning Board.

A. Review Procedure for a Conditional Use Flood Hazard Development Permit

   1. The Flood Hazard Development Permit Application with additional information attached addressing how each of the conditional use criteria specified in the Ordinance will be satisfied, may serve as the permit application for the Conditional Use Permit.

   2. Before deciding any application, the Planning Board shall hold a public hearing on the application within thirty days of their receipt of the application.
3. If the Planning Board finds that the application satisfies all relevant requirements of the ordinance, the Planning Board must approve the application or approve with conditions within 45 days of the date of the public hearing.

4. A Conditional Use Permit issued under the provisions of this Ordinance shall expire if the work or change involved is not commenced within 180 days of the issuance of the permit by the Planning Board.

5. The applicant shall be notified by the Planning Board in writing over the signature of the Chairman of the Planning Board that flood insurance is not available for structures located entirely over water or seaward of mean high tide.

B. Expansion of Conditional Uses

1. No existing building or use of premises may be expanded or enlarged without a permit issued under this section if that building or use was established or constructed under a previously issued Conditional Use Permit or if it is a building or use which would require a Conditional Use Permit if being newly-established or constructed under this Ordinance.

ARTICLE VIII - 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 Code Enforcement Officer:

1. an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer, or architect, for compliance with Article VI, paragraphs F, G, H, or P and,

2. for structures in Zone VE, certification by a registered professional engineer or architect that the design and methods of construction used are in compliance with Article VI.P.2.

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 required certificate(s) and the applicant’s written notification; and,

2. upon determination that the development conforms to the provisions of this ordinance, shall issue a Certificate of Compliance.
ARTICLE IX - 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, 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 in order 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 X - APPEALS AND VARIANCES

The Board of Appeals of the Town of Perry 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 is deemed 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 X 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 X, 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 X, 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 XI - 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 other actions, the Code Enforcement Officer may, upon identifying a violation, submit a declaration to the Administrator of the Federal Insurance Administration requesting a flood insurance denial. 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 XII - 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 XIII - 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 XIV - 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 structure which is on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure.

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

Area of Shallow Flooding - a designated AO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.
**Area of Special Flood Hazard** - 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** – a flood having a one percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood.

**Basement** - area of a building that includes a floor that is subgrade (below ground level) on all sides.

**Breakaway Wall** - a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

**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 Section 4451, paragraph 1) and employed by a municipality to enforce all applicable comprehensive planning and land use laws.

**Conditional Use** - a use that, because of its potential impact on surrounding areas and structures, is permitted only upon review and approval by the Planning Board pursuant to Article VII.

**Containment Wall** – wall used to convey or direct storm water or sanitary water from the initial source to the final destination.

**Development** – a manmade change to improved or unimproved real estate. This includes, but is not limited to, buildings or other structures; mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials; and the storage, deposition, or extraction of materials.

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

**Elevated Building** - a non-basement building that is:

a. built, in the case of a building in Zones A, AE, or AO, so that the top of the elevated floor, or in the case of a building in Zone VE, to have the bottom of the lowest horizontal structural member of the elevated floor, elevated above the ground level by means of pilings, columns, post, piers, or "stilts;" and

b. adequately anchored to not 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, AE, or AO, **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. In the case of Zone VE, **Elevated Building** also
includes a building otherwise meeting the definition of elevated building, even though the lower area is
enclosed by means of breakaway walls, if the breakaway walls meet the standards of Article VI.P.2.b.(3).

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

a. is used to verify compliance with the floodplain management regulations of the National Flood
   Insurance Program; and,

b. is required for purchasing flood insurance.

**Flood or Flooding**

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

**Flood Insurance Rate Map (FIRM)** - 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 Floodprone Area** - 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** - 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** - 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** - the lines marking the limits of floodways on federal, state, and local floodplain maps.

**Freeboard** - 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, which could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

**Functionally Dependent Use** - a use that 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** - 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** - 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.I. of this Ordinance.

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

**Mean Sea Level** – when related to 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)** - the national vertical datum, a standard established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD is based upon mean sea level in 1929 and also has been called “1929 Mean Sea Level (MSL)”.

**New Construction** - 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** - a vehicle that 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. 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 - 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 - 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 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 XV - 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 (e) Rev. 01/17
Prepared by DACF/JP
Town of Perry

Large Scale Water Extraction Ordinance

Adopted: August 18, 2014
Article I. TITLE
This ordinance shall be known and cited as the “Large Scale Water Extraction Ordinance” of the Town of Perry, Maine.

Article II. PURPOSE
The intent and purposes of this ordinance are:
A. To protect the quality and quantity of groundwater, spring water and/or water in aquifers and their recharge areas as well as surface waters such as lakes, ponds, wetlands and streams located wholly or partially within the Town of Perry;
B. To ensure that any large scale water extraction is subjected to prior review and approval so as to establish the ongoing sustainability and quality of said water supplies, and to avoid any interruption or degradation of water quality and quantity to members of the general public within the Town;
C. To protect all private and public property, including all structures and facilities, and to ensure no degradation of existing or new roadways and other infrastructure;
D. To minimize or limit excessive pumping noise, vibration, or pollution from all large scale water extraction facilities and related equipment, activities, and/or vehicles;
E. To ensure that any large scale water extraction facilities do not impair vegetative growth, including forested areas, and to ensure the continuing stability and health of topsoil and surface land, especially in the extraction area;
F. To provide for equitable access to water extraction; and
G. To generally protect the health, safety and welfare of persons dependent upon such water supplies.

Article III. AUTHORITY
This ordinance is adopted and enacted pursuant to 30-A M.R.S. § 3001 et seq. and the Town’s statutory and constitutional home rule authority.

Article IV. LARGE SCALE WATER EXTRACTION
A. Permit Required for Large Scale Water Extraction
It shall be unlawful for any entity, person, consortium or association of entities or persons acting in concert or as part of any common scheme of development to construct or operate a facility capable of extracting on a daily basis more than 5000 gallons of groundwater, spring water, water from streams and rivers, and/or water from aquifers or their recharge areas, regardless of the number of extraction facilities utilized, without first obtaining a written permit issued by the Perry Planning Board, following a public hearing. Large scale water extraction facilities in existence (and that have not been discontinued or abandoned) prior to the effective date of this ordinance shall not require a permit; however, any expansion or change of use in an existing large scale water extraction facility shall be subject to this ordinance and require a permit. For expansions or changes of use in large scale water extraction facilities, all facility activities must comply with this ordinance (existing and proposed). In the event any provision(s) of this ordinance conflicts with each other or another ordinance provision(s) of the Town of Perry, the more restrictive provision(s) shall apply.
B. Activities not requiring a Permit
   1. Fire protection and activities ancillary thereof.
   2. Seasonal Agriculture

C. Application Requirements
   1. An applicant seeking approval for a large scale water extraction facility shall submit a written application accompanied by site plans prepared by a licensed surveyor, licensed engineer or similar appropriately licensed professional.
   2. The Board of Selectmen of the Town of Perry shall establish a nonrefundable application fee schedule which may be amended by the Board of Selectmen from time to time. The nonrefundable application fee shall be submitted contemporaneously with the application. All checks shall be made payable to the Town of Perry.
      a. The Town may retain appropriate professionals or consultants to assist the Planning Board in reviewing any application for a large scale water extraction facility. If the Planning Board determines an application is complete and its review will require third-party professionals or consultants, the Planning Board shall make such recommendations to the Board of Selectmen to engage professionals/consultants to assist in the Planning Board’s review. The applicant shall be responsible for all professional/consultant costs incurred by the Town. The professional(s)/consultant(s) retained by the Town shall estimate the cost of such review, the Planning Board shall notify the applicant of the estimated cost, and the applicant shall deposit, with the Town, the full estimated cost, which the Town shall place in an escrow account. The Town shall pay the professional(s)/consultant(s) from the escrow account and refund the applicant any funds remaining after final payment.

   3. The application shall include:
      a. Evidence of applicant’s right, title and interest in and to the property (ies) from which the water is to be extracted. If such evidence is other than ownership evidenced by a deed duly recorded in the Washington County Registry of Deeds, the entire document/documentation whether lease, option, contract, or other shall be submitted with the application. Proprietary confidential information may be redacted provided it is not necessary to establish right, title, or interest.
      b. A statement of the maximum daily quantity of water to be extracted, from all extraction points operated by the same individual, entity, consortium, association of individuals or entities.
      c. The location(s) of the points of extraction.
      d. The method(s) of extraction.
      e. A copy of all applications, exhibits and reports for such extraction filed or to be filed with any other municipal authority or any agency or department of the State of Maine, including as required by M.R.S.A. 2660 et seq. (transport of water for commercial purposes) of under applicable
Department of Health and Human Services rules and regulations, and any agency or department of the United States.

f. A copy of any permit, approval or denial for such extraction as may have been issued by any agency referred to in (e) above.

g. A written report, certified to the Planning Board procured and paid for by the applicant, of a hydrogeologic investigation and study, conducted and prepared by a licensed professional hydrogeologist, geologist, hydrologist, registered professional engineer or other appropriately licensed professional possessing, in the judgment of the Planning Board, comparable credentials and qualifications. This report must address at least the following:

(1) The rates of drawdown and recharge of any aquifer or ground water source as may have been established by a pumping or “stress test” or other similar testing regimen in accordance with standards within the geology and engineering professions.

(2) The characteristic of the aquifer or other ground source, including rates of drawdown and recharge, sustainable extraction rates, aquifer boundaries, recharge areas, impacts on the water table, and impacts on any and all existing water bodies including but not limited to lakes, ponds, rivers, streams and wetland areas and private wells or other existing extraction locations within the zone of contribution.

(3) Possible effects on the aquifer or other groundwater resources that might result in the disturbance of existing minerals, such as, but not limited to, iron, manganese, arsenic, and uranium, and any health hazards raised by such disturbance(s) or other impacts, including issues such as drinking water turbidity, clarity and odor, shall also be noted.

h. The application shall be accompanied by written notification of the application and an explanation of the intent, scope, and location of the proposed water extraction, in terms readily understandable to a layman, to be addressed and mailed to, via certified mail, return receipt requested, the following:

(1) The owners of record of all parcels of land lying above the aquifer or other water source cited in the application.

(2) The owners of record of all parcels of land abutting the applicant’s land and/or within the 3,000-ft wellhead protection zone or other water source cited in the application.

(3) The owners of record of all parcels of land having frontage on any body of water whether lake, pond, river, stream or wetland within the 3,000-ft wellhead protection zone or other water source cited in the application, even if such
individual parcels may themselves lie beyond the wellhead protection zone or other water source.

(4) For purposes of these notification requirements, an applicant is entitled to rely on the information on file at the Town Clerk’s office as represented by the Town’s current assessors’ maps and the mailing addresses maintained by the Town as to the owners of the affected parcels shown thereon. Actual posting of the certified mail notices is not required until the application is declared or deemed to be complete. See D (6) below.

(5) For good cause shown, the above notice requirements may be modified by the Planning Board where, for example, it can be established that a body of water, or portion of which, lying within the 3,000-ft wellhead protection zone or other water source, extends so far from the proposed extraction point(s) that actual notice to the owners of all land having frontage on that body of water is not necessary.

i. A small-scale site plan depicting at least the following:

(1) The limits (outside perimeter) of the aquifer or other water source cited in the application, and the bounds of the land of the applicant.
(2) The location of all water bodies located within the 3,000-ft wellhead protection zone or other water source.
(3) The location(s) of the proposed extraction points.
(4) The existing network of public or private roads leading to or by the extraction point(s).
(5) Any proposed new roads or driveways to be constructed for access to and egress from the extraction point(s), and the point(s) of intersection of such proposed roads or driveways with existing roads.
(6) Any existing or proposed utility lines to be utilized in the extraction operation(s).
(7) The location and type of test wells or other monitoring methods.
(8) Any existing or proposed pipes, pipelines, aqueducts, or similar conduits that are intended to convey extracted water from the extraction point(s) towards the intended end user, if any part of the extracted water is ultimately to be transported outside the geographic limits of the Town of Perry.
(9) Any other relevant and material detail(s) bearing on the proposed extraction process the omission of which would tend to hinder the ability of the reviewing authority, affected land owners or the public from developing a full understanding of the scope and impact of the proposal.

j. A large scale site plan depicting at least the following:
(1) A detailed plan of the extraction point(s) including without limitation well heads, pumping facilities, monitoring or test wells, buildings, sheds, paving, vehicular drives, parking and turn around, utility lines, fencing, access roads or driveways, elevation and contour lines.

(2) Any other relevant and material detail(s) bearing on the proposed extraction process, the omission of which would tend to hinder the ability of the reviewing authority, affected landowners or the public from developing a full understanding of the scope and impact of the proposal.

k. A complaint protocol.

l. The Planning Board may also request additional application materials it deems necessary to determine whether an application is in compliance with this ordinance.

D. Application Process

The applicant shall submit to the Planning Board 10 copies of the entire application, including studies, reports, site plans, and all other items referred to in Article IV (C), above.

1. Within thirty (30) days from the date of submission the Planning Board shall conduct a preliminary review of the application solely for the purpose of determining whether the application is complete as required by this ordinance.

2. For good cause shown, and upon receipt of confirmatory independent technical advice, the Planning Board may waive one or more of the application details upon a determination that such details are unnecessary, unobtainable as a practical matter or duplicative, and that such waiver would not tend to hinder the ability of the Planning Board, affected landowners or the public from developing a full understanding of the scope and impact of the proposal.

3. If the Planning Board deems the application incomplete in any material or relevant respect, it shall so inform the applicant by the best practical means, either in writing or verbally, at a regularly scheduled meeting of the Planning Board, at which time the applicant shall have sixty (60) days to complete its application in accordance with this ordinance, upon failure of which the application shall be deemed withdrawn. The Planning Board may, at its discretion, increase the time period to complete an application upon a showing of good cause.

4. Upon finding the application complete, the Planning Board will have thirty (30) days to determine whether to recommend to the Board of Selectmen the need to acquire the services of a third-party professional/consultant to assist the Planning Board in its review of the application (see Article IV, section C, part 2a). If the Town engages a third-party professional/consultant, the Planning Board’s further review of the application shall not continue until the applicant deposits the requisite funds to be held in escrow per Article IV above.

5. The Planning Board shall have 30 days to schedule a public hearing on the application from either (i) the date when Planning Board determines the application is complete; or (ii) if the Town retains third-party
professionals/consultants, from the date the applicant deposits the requisite funds to be held in escrow per Article IV above, whichever date is later. The public hearing date scheduled by the Planning Board shall be no later than 90 days from either (i) the date when Planning Board determines the application is complete; or (ii) if the Town retains third-party professionals/consultants, from the date the applicant deposits the requisite funds to be held in escrow per Article IV above, whichever date is later. The Planning Board, at its discretion, may schedule or re-schedule the public hearing within a reasonable time.

6. Any review of the application by the Planning Board or its agents for completeness is preliminary only, is not to be deemed a substantive review, and confers no vested rights or pending proceeding status upon the applicant or application.

7. Applicant’s obligations of written notification via certified mail or property owners as set forth in Article IV (C) (3) (h) above shall not commence until the application is declared or deemed complete under this ordinance.

E. Review Process; Hearing Process

1. The completed application shall be reviewed by the Planning Board at a public hearing convened for that purpose, no less than 7 days following published notice in a newspaper of general circulation within the Town of Perry and posting of notices at three conspicuous public places within the Town. Confirmation on the hearing date is stipulated on proof that certified mail notices have been sent to all affected landowners, as previously set forth in this ordinance, no less than 10 days prior to the public hearing date.

2. The Planning Board shall be entitled to adopt whatever procedural rules for the hearing including the imposition of reasonable time limits for the presentations of the applicant, opponents if any, and the general public, that it deems appropriate, fair, and reasonably calculated to afford a full consideration of the issues pertaining to the application.

F. Decision: Performance Standards

1. Upon the adjournment of the public hearing, the Planning Board shall schedule a public session of the Planning Board, to commence not later than forty-five (45) days from the final adjournment of the public hearing, to deliberate and render a decision.

2. The Planning Board may:
   a. Approve the application;
   b. Deny the application, or
   c. Approve the application with conditions.

3. Any approval shall specify the maximum daily quantity of water authorized for extraction, and any increase in such daily totals shall require further application and review in accordance with this ordinance.

4. The Planning Board shall issue a written decision, with findings of fact and rulings and conclusions, not later than thirty (30) days from the date on which it votes at a public session to approve, deny, or approve with conditions, and a copy of such written decision shall thereupon promptly be provided to applicant, and otherwise be available publicly.
G. Administrative Appeals

a. Any aggrieved person may appeal a decision of the Planning Board under this ordinance within 30 days of issuance of the Planning Board’s written decision to the Perry Board of Appeals, which shall not conduct a de novo review but instead shall conduct a purely appellate review.

b. Any aggrieved person may appeal a decision of the Planning Board directly to the Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

Article V. PERFORMANCE STANDARDS

No approval shall be granted any application until and unless the reviewing authority shall have affirmatively found that each of the following performance standards has been or will be met. The burden of proof is on the applicant. Applicant must also demonstrate to the reviewing authority that it possesses the expertise and financial resources to provide continuing adherence to these standards.

A. Geologic and Hydrologic Standards

1. The quantity of water to be extracted will not have an adverse effect upon ground water flow patterns relating to the aquifer, its recharge areas, or other ground water sources within the Town.

2. The quantity of water to be extracted will not adversely impact, diminish or alter any surface waters within the Town, including during any periods of drought.

3. The quantity of water to be extracted will not cause any ground subsidence beyond the property lines of applicant’s property.

4. The quantity of water to be extracted will not adversely affect the long-term sustainability of the aquifer, its recharge areas, or other groundwater source, including during periods of drought.

5. The Proposed extraction will not create a health risk or adversely affect drinking water turbidity, clarity, odor or the general quality of the drinking water. Ongoing follow-up monthly testing for this purpose is to be undertaken by the developer with results of such tests provided in writing to the Perry Code Enforcement Officer (CEO) on a monthly basis.

6. The establishment of an ongoing follow-up monitoring system and development of a system of recording and documenting extraction and recharge data, within the zone of contribution, is to be reported in writing to the Perry CEO on at least a monthly basis. At least 25% of monitoring locations shall be at private wells located within the zone of contribution, provided applicant obtains landowner permission for such testing.

7. The hydrogeology for aquifers within the lands of the Town of Perry can sometimes be described as being nonuniform in shape, size and depth of a given aquifer. Accordingly the effects of drawdown on private wells from water extraction activities may occur considerably beyond the customary 3000-foot wellhead protection zone. As such, the scope of effects of water extraction on private wells will likely need to be determined empirically and specifically for each water extraction project. To determine the scope of effects, both pre- and post-production well water sampling will need to be planned and done. It is recommended that the Planning Board and its experts work with the applicant and its experts to determine the best estimate of the scope of effects on water quantity and quality for private wells. Baseline sampling of water quantity and
quality will then be done for all private wells within the estimated zone of effect. Post production, follow-up sampling will be provided periodically to owners of private wells to confirm that the water extraction activities have not adversely affected their water quantity and quality. These activities will be paid by the applicant.

B. Impact on the General Vicinity

1. The reviewing authority shall require the furnishing of a bond or other performance guaranty it deems equivalent to secure the applicant’s obligations under this section.
2. Vehicular access to extraction facility (ies) for activities such as loading and unloading shall occur in such a manner as to safeguard against hazards to traffic and pedestrians on adjacent streets or roads to avoid traffic congestion and traffic safety hazards or other safety risks.
3. The applicants must provide proof that the proper permits for any driveways or access roads to the extraction facility (ies) are issued.
4. Additional vehicular demand on existing town roads or public easements occasioned by the operation of the extraction facility (ies) will not exceed the capacity of those roads, or cause premature failure, aging, or diminished utility of those roads.
5. If extraction facility (ies) will be served by pipes, pipelines, aqueducts or similar devices, such installations will be sited and constructed in a manner that will not interrupt the public’s use of any existing roadway, interrupt the public’s access to any public facility or great pond, interrupt private access to private property, or pose the risk of damage to any property along or through which the installation traverses as a result of any failure or malfunction which might cause ponding, erosion, run-off or similar condition.

C. Complaint Protocol

1. The applicant shall develop and submit a complaint protocol that provides (i) a transparent process for reporting complaints to the permittee of a large scale water extraction facility; (ii) a consistent approach to documenting complaints and to inform subsequent monitoring efforts; and (iii) a process of informing the Town of complaints.

Article VIII. OPERATIONAL PERMIT AUTHORITY

An operational permit issued by the Perry CEO is required before commencement of operations of any large scale water extraction facility covered by this ordinance. Large scale water extraction facilities not covered by this ordinance are not required to obtain an operational permit. A valid operational permit is also required to continue operations of a large scale water extraction facility covered by this ordinance. An operational permit is valid for two (2) years from the date of issuance, and is not transferrable. Operation of a large scale water extraction facility that is subject to this ordinance without operational authority shall be a violation of this ordinance.
Any person intending to operate a large scale water extraction facility ["Operator"] covered by this ordinance in the Town of Perry must submit the following information to the CEO for review:

A. **Name of Operator.** The Operator’s name, address and phone number.

B. **Primary Representative of Operator.** The name, address, and phone number of the primary representative of the Operator.

C. **Permits.** Copies of all local, state and/or federal permits or other governmental approvals obtained by the Operator to operate the large scale water extraction facility.

D. **Agreements.** A list of the name, address, Tax Map and Lot Number(s), and phone numbers for all properties that are the subject of agreements relating to the proposed large scale water extraction facility.

E. **Compliance.** A signed statement from the Operator agreeing to comply with all terms and conditions of this ordinance and any permits or approvals issued thereunder.

F. **Technical and Financial Capacity.** Evidence of technical and financial capacity to comply with the provisions of this ordinance.

G. **Fee.** A fee in the amount as determined by the Board of Selectmen in its adopted schedule of fees.

**Article IX. ENFORCEMENT AND SEVERABILITY**

This ordinance may be enforced by the CEO of the Town of Perry under 30 M.R.S. § 4452, the fines and penalties set forth therein to apply hereto. Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not invalidate or affect the enforcement of any other section or provision of this ordinance.

As additional means of enforcement, the CEO may suspend or revoke any permit issued hereunder if it determines, after notice and hearing, that it was issued in error or upon false information, or that the applicant has failed to comply with any conditions of approval, and upon such suspension or revocation, all water extraction addressed by said permit shall cease until a new approval or permit is obtained under this ordinance by the applicant. In addition, if the act of water extraction adversely affects the quantity and/or quality of groundwater, spring water and/or water in aquifers and their recharge areas, as well as surface waters such as lakes, ponds, wetlands and streams located wholly or partially in the Town of Perry, the CEO may suspend or revoke any permit issued hereunder for water extraction.
Article IX. ANNUAL REPORTS FROM EXTRACTING ENTITY.

Annual reports to the Planning Board shall include but not be limited to:
A. Amount of water extracted and dates of extraction.
B. Test results of extracted water.

Article X. EFFECTIVE DATE

This ordinance shall become effective immediately upon its adaption and enactment by a majority at a Town Meeting of the registered voters of Perry. Any modifications of this ordinance shall be done by a majority vote at a Town Meeting.

I certify the foregoing ordinance was duly adopted at the Town Meeting dated August 18, 2014.

[Signature]

Town Clerk
TOWN OF PERRY, MAINE  
RECALL ORDINANCE

SECTION 1. Establishment

Under M.R.S.A. Title 30-A Section 2602 (6), as amended Oct. 13, 1993, a town may enact an ordinance for the recall and removal of elected municipal officials with the exception of school board members as noted in 30-A M.R.S.A. section 2602:

SECTION 2. Applicability

Any selectman, assessor, planning board member, or other elected official of the Town of Perry (other than members of the school board) may be recalled and removed from office as herein provided for.

SECTION 3. Petitions for Recall

a. The petition for recall must contain only signatures of the registered voters of the Town of Perry, equal in number to twenty-five percent (25%) of the number of votes cast in the town in the last Gubernatorial election, but in all cases no less than fifty.

b. The petition shall be addressed to those members of the Board of Selectmen having no interest in the subject matter of the petition.

c. The petition shall state the name and office of the person whose removal is being sought, and a general statement of the reasons such removal is desired.

d. If recall of more than one official is being sought there shall be a separate petition for each official whose removal is being sought.

e. Each page of the petition shall provide a space for the voter's signature, address and printed name.

f. 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 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 clerk's office and the voter who filed the petition will be notified.
SECTION 5. Calling the Recall Election

a. If the petition is certified by the 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 official or 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 MRSA § 2528, to be held not less than 30 nor more than 45 days thereafter, provided that a regular municipal election will not be held within 60 days of receipt of the certified petition. In that 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 Town Selectmen fail or refuse to order an election as herein provided, the Town Clerk shall call the election to be held not less than 30 days nor more than 45 days following the selectman's failure or refusal to order the required election.

SECTION 6. Ballots for Recall Election

Unless the 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 official whose recall is being sought inserted in the blank space.

SECTION 7. Result of Election

In the event of an affirmative vote for removal, 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 contained in the Maine State Statutes.

A true copy as enacted Nov. 7, 2006

Alice Scanlon
Town Clerk
Town of Perry
Section 1. Purpose and Authority
The purpose of this "Ordinance Restricting Vehicle Weight on Posted Ways" (hereinafter, the "Ordinance") is to prevent damage to town ways and bridges in the Town of Perry which may be caused by vehicles of excessive weight, to lessen safety hazards and the risk of injury to the traveling public, to extend the life expectancy of town ways and bridges, and to reduce the public expense of their maintenance and repair. This Ordinance is adopted pursuant to 30-A M.R.S.A. § 3009 and 29-A M.R.S.A. §§ 2395 and 2388.

Section 2. Definitions
The definitions contained in Title 29-A M.R.S.A. shall govern the construction of words contained in this Ordinance. Any words not defined therein shall be given their common and ordinary meaning.

Section 3. Restrictions and Notices
The municipal officers may, either permanently or seasonally, impose such restrictions on the gross registered weight of vehicles as may, in their judgment, be necessary to protect the traveling public and prevent abuse of the highways, and designate the town ways and bridges to which the restrictions shall apply.

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

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

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

Section 4. Exemptions
Vehicles that are exempt from the Maine Department of Transportation’s (MDOT) "Rules and Regulations Restricting Heavy Loads on Closed Ways" dated December 31, 1996 and amended on March 4, 1998, a copy of which is attached hereto and is hereby
incorporated as part of this Ordinance, are exempt from this Ordinance. In addition, any vehicle delivering home heating fuel and operating in accordance with a permit issued by the MDOT under 29-A M.R.S.A. § 2395 (4) and, when necessary during a period of drought emergency declared by the governor, any vehicle transporting well-drilling equipment for the purpose of drilling a replacement well or for improving an existing well on property where that well is no longer supplying sufficient water for residential or agricultural purpose and operating in accordance with a permit issued by the MDOT under 29-A M.R.S.A. § 2395 (4-A).

Section 5. Permits
The owner or operator of any vehicle not otherwise exempt as provided herein may apply in writing to the municipal officers for a permit to operate on a posted way or bridge notwithstanding the restriction. The municipal officers may issue a permit only upon all of the following findings:
(a) no other route is reasonably available to the applicant;
(b) it is a matter of economic necessity and not mere convenience that the applicant use the way or bridge; and
(c) the applicant has tendered cash, a bond or other suitable security running to the municipality in an amount sufficient, in their judgment, to repair any damage to the way or bridge which may reasonably result from the applicant's use of same.

Even if the municipal officers make the foregoing findings, they need not issue a permit if they determine the applicant's use of the way or bridge could reasonably be expected to create or aggravate a safety hazard or cause substantial damage to a way or bridge maintained by the municipality. They may also limit the number of permits issued or outstanding as may, in their judgment, be necessary to preserve and protect the highways and bridges.
In determining whether to issue a permit, the municipal officers shall consider the following factors:
(a) the gross registered weight of the vehicle;
(b) the current and anticipated condition of the way or bridge;
(c) the number and frequency of vehicle trips proposed;
(d) the cost and availability of materials and equipment for repairs;
(e) the extent of use by other exempt vehicles; and
(f) such other circumstances as may, in their judgment, be relevant.
The municipal officers may issue permits subject to reasonable conditions, including but not limited to restrictions on the actual load weight and the number or frequency of vehicle trips, which shall be clearly noted on the permit.

Section 6. Administration and Enforcement
This Ordinance shall be administered and may be enforced by the municipal officers or their duly authorized designee [such as road commissioner, code enforcement officer or law enforcement officer].

Section 7. Penalties
Any violation of this Ordinance shall be a civil infraction subject to a fine of not less than
$250.00 nor more than $1000.00. Each violation shall be deemed a separate offense. In addition to any fine, the municipality may seek restitution for the cost of repairs to any damaged way or bridge and reasonable attorney fees and costs. Prosecution shall be in the name of the municipality and shall be brought in the Maine District Court.

Section 8. Amendments
This Ordinance may be amended by the municipal officers at any properly noticed meeting.

Section 9. Severability; Effective Date
In the event any portion of this Ordinance is declared invalid by a court of competent jurisdiction, the remaining portions shall continue in full force and effect. This Ordinance shall take effect immediately upon enactment by the municipal officers at any properly noticed meeting.

*Public Hearings held on 07/10/06 and 09/18/06; ordinance adopted on 10/16/06 at Selectmen’s Meeting. 60,000 limit to be permanently posted on all Town Roads.

*Prepared from the Maine Municipal Association Legal Services Dept. Sample Ordinance.
PEMBROKE and PERRY REGIONAL SHELLFISH CONSERVATION ORDINANCE

For the Communities of Pembroke and Perry

Mission Statement: These communities shall act collaboratively as stewards to preserve, protect, manage and enhance the shellfish resources and ecological well being of the region and to insure a sustainable harvest of shellfish and opportunity for those who make their living on the tide.

Management Partnership Team

Pembroke and Perry Regional Shellfish Conservation Committee
&
Pembroke and Perry Regional Shellfish Municipal Joint Board
PEMBROKE AND PERRY REGIONAL SHELLFISH
CONSERVATION ORDINANCE

Communities of Pembroke and Perry

Mission Statement: These communities shall act collaboratively as stewards to preserve, protect, manage and enhance the shellfish resources and ecological well being of the northern reaches of Cobscook Bay and parts of Passamaquoddy Bay surrounding Pembroke and Perry and to insure a sustainable harvest of shellfish and opportunity for those who make their living on the tide.

1. Authority: This ordinance is enacted in accordance with 12 M.R.S.A. Section 6671.

2. Purpose: To establish a shellfish conservation program for the participating communities, which shall insure the protection and optimum utilization of shellfish resources within its limits. These goals shall be achieved by means, which may include:
   A. Licensing.
   B. Limiting the number of shellfish harvesters.
   C. Restricting the time and area where digging is permitted.
   D. Limiting the minimum size of clams taken.
   E. Limiting the amount of shellfish taken daily by a harvester.

3. Administration

3.1 The Regional Shellfish Conservation Committee: The Regional Shellfish Management Program for the participating communities shall be administered jointly by the Pembroke and Perry Regional Shellfish Municipal Joint Board and the Pembroke and Perry Regional Shellfish Conservation Committee. The Conservation Committee shall consist of two members and one alternate from each participating town. Committee Members shall be commercial harvesters licensed under this Ordinance if they are available and willing to serve and shall be appointed by the municipal officers of the participating communities and in accordance with the procedures outlined in this document for terms of up to three (3) years, except the initial appointment which shall be for 1, 2 or 3 years. A quorum shall consist of a majority of the members.

   A. Selection of Regional Shellfish Conservation Committee Members: Selectmen from each of the participating communities shall appoint Regional Shellfish Conservation Committee members according to their own policies and procedures.

   B. Regional Shellfish Conservation Committee’s Responsibilities shall include:
      i. Submitting to the Municipal Joint Board annually proposals for the expenditure of funds for the purpose of shellfish management.
      ii. Keeping this Ordinance under review and making recommendations for its amendments.
      iii. Recommending management actions to the Municipal Joint Board in conjunction with the Area Biologist of the Department of Marine Resources. Such actions may include, but are not limited to, re-seeding of defined shellfish flats, establishing conservation closures, shoreline cleanup, and limiting and/or expanding harvesting activities.
      iv. Recommending to the Municipal Joint Board enforcement actions for the protection of the resource.
      v. Submitting an annual report to the participating communities and the Department of Marine Resources covering the aforementioned topics and other Committee activities.
vi. Assist in identifying possible sources of pollution harmful to the intertidal habitat and the shellfish resources.

vii. Yearly submit an Annual Shellfish Management Plan to the Municipal Joint Board for their approval and the approval of the Department of Marine Resources. The plan shall outline in detail the number of licenses to be issued annually, license fees, the amount of shellfish allowed to be harvested per tide, restrictions on the times and days harvesting shall be allowed, and other relevant resource management tools. The plan shall be submitted to the Commissioner of Marine Resources for approval.

viii. Yearly submit an Annual License Allocation Procedure Plan for approval by the Municipal Joint Board. This plan shall outline in detail how licenses are to be allocated on an annual basis and shall be consistent with 12 M.R.S.A Section 6671 (3-A)(C). After receiving approval for license allocations from the Commissioner of Marine Resources, the Regional Shellfish Conservation Committee shall notify the Administrative Community, in writing, the number of shellfish licenses to be issued.

C. Attendance: Regional Shellfish Conservation Committee members shall make every effort to regularly attend Committee meetings. Any Committee member who misses more than two consecutive unexcused absences shall lose their seat on the Committee.

D. Convictions: Anyone convicted of violating this ordinance shall be removed from the committee.

3.2. MUNICIPAL JOINT BOARD: Each of the participating communities shall appoint one municipal officer as a member of a Joint Board to act as the town's representative for all issues concerning this agreement and they will jointly appoint a third person from either town. The person so appointed shall serve at the pleasure of the body that made the appointment.

A. Meetings: The Chairman of the Joint Board shall be elected at the first meeting following the approval of this agreement. After that, the Chairman will be elected at the first meeting of each calendar year by the members of the Joint Board. A quorum shall consist of a majority of the members of the Board. Notice of all meetings of the Joint Board shall be given to each member of the Board and the Chairman of the Regional Shellfish Conservation Committee, shall be published in accordance with each town's policies, and shall be open to the public.

B. Powers: The Joint Board is authorized to approve the number of shellfish licenses to be issued, approve license fees, open and close the flats, set times when digging is allowed, set permitted quantities that may be harvested, and to take such actions as authorized by each of the participating community's Board of Selectmen/Council, and subject to the Department of Marine Resources approval as noted in Section 6, based upon the recommendations of the Regional Shellfish Conservation Committee. These actions shall be described in an Annual Shellfish Management Plan submitted by the Regional Shellfish Conservation Committee. Unanimous recommendations of the Regional Shellfish Conservation Committee regarding the management of the shellfish resources (i.e., those issues related to the sustainable harvest of the resource and not related to personnel, fiscal expenditures or legal matters) shall be approved by the Joint Board unless a unanimous vote of the Joint Board decides otherwise.

4. Definitions

A. Resident: The term "resident" refers to a person being a Maine resident who has proof of being domiciled in at least one of the participating communities continuously for a minimum of one year prior to the time his claim of such residence is made and/or whom has paid real
estate taxes in at least one of these participating communities continuously for at least five years. In order to determine resident eligibility new residents shall provide two forms of proof of residency from the lists below. At least one shall be from Section 3 in chart below. All licensed harvesters will provide proof of residency on an annual basis.

<table>
<thead>
<tr>
<th>Section 1</th>
<th>Section 2</th>
<th>Section 3</th>
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<tr>
<td>*Copy of deed AND record of most recent mortgage payment</td>
<td>A utility bill or other work order dated within the past 60 days including: *Gas Bill *Oil Bill *Electric Bill *Telephone Bill *Cable or Satellite Bill</td>
<td>*Valid Drivers License displaying physical address</td>
</tr>
<tr>
<td>*Copy of Lease AND record of most recent legal affidavit from landlord affirming tenancy.</td>
<td>Dated within the past year: *W-2 Form *Excise (vehicle) tax bill *Property tax bill</td>
<td>*Valid Maine photo ID card displaying physical address</td>
</tr>
<tr>
<td>*Legal affidavit from landlord affirming tenancy AND record of most recent rent payment.</td>
<td>*Dated within the past 60 days: *Letter from approved *Government agency *Payroll Stub *Bank or credit card statement</td>
<td>*Valid Passport displaying physical address</td>
</tr>
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**B. Nonresident:** The term "nonresident" means anyone not qualified as a resident under this ordinance.

**C. Shellfish, Clams and Intertidal Shellfish Resources:** When used in the context of this ordinance the words "shellfish", "clams", and "intertidal shellfish resources" mean soft shell clams (Mya arenaria), quahogs (Mercenaria mercenaria), razor clams (Ensis directus), hen clams (Spisula solidissima), eastern oysters (Crassostrea virginica) and European Oysters (Ostrea edulis).

**D. Municipality:** Refers to the Communities of Pembroke and Perry, Maine.

**E. Administrative Municipality:** The community that administers this Ordinance and the directives of the Municipal Joint Board

**F. Annual License Allocation Procedure Plan:** A plan written by the Regional Shellfish Conservation Committee and submitted to the Municipal Joint Board for approval. This plan shall outline in detail how licenses are to be allocated on an annual basis and shall establish priority status for the allocation of licenses as referred to in Section 5.3.

**G. Annual Shellfish Management Plan:** A detailed shellfish resource management plan written on an annual basis by the Regional Shellfish Conservation Committee and submitted to, and approved by, the Municipal Joint Board for submission to, and approval by, the Maine Department of Marine Resources. Said plan shall define actions to be taken regarding the number of licenses to be issued, re-seeding activities, conservation closures, limits on allowable harvest and harvesting days and times, and other measures taken to ensure a sustainable harvest of the resource.
H. **Conservation Time:** Those measures and activities approved by the Regional Shellfish Conservation Committee for the purposes of resource enhancement and the support of the Pembroke and Perry Regional Shellfish Management Program. Said activities shall be outlined in the Annual Shellfish Management Plan. Conservation time must be completed prior to the issuance of a municipal commercial shellfish license in accordance with the Annual License Allocation Plan and Conservation Regulations.

5. **LICENSING:**

A Pembroke and Perry Regional Shellfish License is required to harvest shellfish in the jurisdiction of this Ordinance. It is unlawful for any person to dig or take shellfish from the shores and flats of the participating communities for the purpose of selling the clams without having a current commercial license issued by a participating town as provided by this Ordinance. Additionally, a commercial digger must have a valid State of Maine Commercial Shellfish License issued by the Department of Marine Resources prior to harvesting clams for commercial purposes. It shall be unlawful for any individual whose state license or right to harvest has been suspended by the state to harvest or possess shellfish without proof of purchase. Also, if such individual currently holds a municipal license such license shall be suspended for the same period of time. Restrictions on licenses regarding the harvest of shellfish as defined in this ordinance shall be outlined in the Annual Shellfish Management Plan proposed by the Regional Shellfish Conservation Committee.

**Start Up Licensing and Requirements:** Those who have already purchased licenses in the communities of Pembroke and Perry will remain. Following action of the Municipal Joint Board, license fees will be set and take effect immediately thereafter. Following that action, all new license sales will be for a Pembroke and Perry Regional Shellfish License. Assuming the new fees will be different following approval of this ordinance and interlocal agreement, all current license holders licenses will become a Pembroke and Perry Regional Shellfish License. No refunds will be given.

5.1 **Designation, Scope and Qualifications:**

**A. Resident Commercial Shellfish License:** The license is available to residents of a participating municipality and State of Maine Resident real estate tax payers of at least one of the participating municipalities and entitles the holder to dig and take any amount of shellfish from the shores and flats of these municipalities and reciprocating municipalities.

**B. Nonresident Commercial Shellfish License:** The license is available to nonresidents of the region and entitles the holder to dig and take any amount of shellfish from the shores and flats of this region.

**C. Resident Junior Commercial Shellfish License:** This license is available to residents of the municipality who are in high school or 18 years or less at the time of issuance of the license. A resident junior license shall be half the cost of, and require only half of the conservation time necessary for, a regular commercial resident license.

**D. Nonresident Junior Commercial Shellfish License:** This license is available to nonresidents who are in high school or 18 years or less at the time of the issuance of the license. A nonresident junior license shall be half the cost of, and require only half of the conservation time necessary for, a regular commercial nonresident license.

**E. Resident Senior Commercial License:** This license is available to resident seniors over the age of 60. Fees for this license shall be half the cost of, and require only half of the conservation time necessary for, a regular commercial resident license.
F. Non-Resident Senior Commercial License: This license is available to nonresident seniors over the age of 60. Fees for this license shall be half the cost of, and require only half of the conservation time necessary for, a regular commercial non-resident license.

G. Residential Family Recreational Shellfish License: The license is available to Residents and Maine resident real estate taxpayers of participating municipalities who do not hold a valid Maine State Commercial Shellfish License and entitles the family to dig and take no more than one peck of shellfish or 3 bushels of “hen” or “surf” clams in any one day for the use of himself and his family. Residents with an Aquaculture lease permits shall be exempt and eligible for a recreational license.

H. Nonresident Family Recreational Shellfish License: The license is available to any person not a resident of this region who does not hold a valid Maine State Commercial Shellfish License and entitles the family (same domicile) to dig and take not more than one peck of shellfish or 3 bushels of “hen” or “surf” clams in any one day for the use of himself and his family. Non residents with an Aquaculture Lease Permit shall be exempt and eligible for a recreational license.

I. Senior Recreational Resident/Non-Resident License: Recreational shellfish license fees will be waived for residents or non-residents 60 years or older.

J. License must be signed: The licensee must sign the license to make it valid. License must be in possession when engaged in harvesting. By signing the license the harvester acknowledges that they must submit to inspection by the Municipal Shellfish Warden.

5.2 Fees: A schedule of fees shall be available at the Town Offices of all participating communities. The fees for the licenses shall be determined annually by the Regional Shellfish Committee and Municipal Joint Board. Licensees shall submit fees, in full upon issuance of license. Fees received for shellfish licensing shall be used by the Administrative Municipality to support the Regional Shellfish Management Ordinance. Sale of recreational licenses shall be the responsibility of each participating town. Any and all fees and license sales information for recreational licenses shall be collected by the participating municipalities and sent to the Administrative Municipality monthly.

5.3 Application Procedure: Any person may apply to the Town Clerk for the licenses required by this ordinance on forms provided by the Administrative Municipality. Notice of available commercial licenses shall be published in a trade or industry publication, or in a newspaper, or newspapers, or combination of newspapers with general circulation which the Municipal Joint Board consider effective in reaching person affected, not less than ten (10) days prior to the period of issuance and shall be posted in the municipal offices of the participating communities until the period expires. Applications for commercial licenses must be received at the Town Office of the Administrative Municipality as required by the Allocation Plan. No Shellfish licenses may be reserved and licenses cannot be transferred.

A. Contents of Application: The application must be in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, signature and any additional information the municipality may require.
B. Misrepresentation: Any person who intentionally gives false information on a license application shall cause the application to be removed from consideration, if a license is issued as a result of the false information, said license to become invalid and void.

C. Address Change: A person holding a commercial shellfish license under this ordinance shall notify the town clerk of the Administrative Town within ninety (90) days of address change outside of the participating municipalities.

5.4. License Allocation Procedures: License sales procedures shall be determined by the Shellfish Management Committee, approved by the Municipal Joint Board, and submitted to the Department of Marine Resources for their approval at least thirty (30) days prior to the licenses going on sale. Notice of the number of licenses to be issued and the procedure for application shall be defined by an Annual License Allocation Plan.

A. The Town Clerk of the Administrative Municipality shall issue licenses to those residents and non residents who have met the requirements of obtaining a commercial license. The Town Clerk shall issue licenses allocated starting June 1able date. A lottery for non resident commercial licenses may be held June 15th or the next business day.

B. Conservation time may be completed prior to the issuance of a municipal commercial shellfish licenses in accordance with the Annual License Allocation Plan and Annual Management Plan.

C. Any license holder convicted of any violation of this ordinance shall forfeit seniority. Those who have held commercial licenses uninterrupted, from the first year of the Ordinance shall maintain seniority.

Details explaining how licenses will be issued will be described in the Annual License Allocation Procedures Plan.

5.5 Limitation of Diggers: The number of commercial licenses may be limited and will be issued according to the Annual License Allocation Plan.

A. If it is determined that Limited Licenses are necessary the Administrative Community shall issue licenses to residents and nonresidents as allocated from June 1st or the first business day following and then for 90 days, after which licenses shall be sold without regard to residency on a first come first serve basis or lottery.

5.6 Open License Sales: When the Shellfish Conservation Committee determines limiting shellfish licenses is not an appropriate shellfish management option for one or more license categories for the following year;

A. The number of recreational licenses will not be limited. Recreational licenses shall be issued to residents or non residents without restriction.

5.7 License Expiration Date: Each license issued under authority of this ordinance expires June 30th of each year.
5.8 **Fee Waivers:** Recreational shellfish license fees shall be waived for individuals 60 years or older and 12 years or younger.

6. **Opening and Closing of Flats:** The Shellfish Conservation Committee in conjunction with Municipal Joint Board, upon the approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvest. Upon concurrence of the Department of Marine Resources Area Biologist that the status of shellfish resource and other factors bearing on sound management indicate that an area should be opened or closed, the Shellfish Conservation Committee and Municipal Joint Board may call a public hearing, and shall send a copy of the notice to the Department of Marine Resources. The decision of the Municipal Joint Board and Shellfish Conservation Committee made after the hearing shall be based on findings of fact.

7. **Minimum Legal Size of Soft Shell Clams:** It is unlawful for any person to possess soft shell clams within the municipality which are less than two (2) inches in the longest diameter except as provided by Subsection 7.2 of this section.

7.1 **Definitions:**

A. **Lot:** The word "lot" as used in this ordinance means the total number of soft shell clams in any bulk pile. Where soft shell clams are in a box, barrel, or other container, the contents of each box, barrel, or other container constitutes a separate lot.

B. **Possess:** For the purpose of this section, "possess" means dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft shell clam shell stock.

7.2 **Tolerance:** Any person may possess soft shell clams that are less than two inches if they comprise less than 10% of any lot. The tolerance shall be determined by count of not less than one peck nor more than four pecks taken at random from various parts of the lot or by a count of the entire lot if it contains less than one peck.

7.3 **Penalty:** Whoever violates any provision of this section shall be punished as provided by 12 M.R.S.A. Section 6681.

8. **Penalty:** A person who violates this ordinance shall be punished as provided by 12 M.R.S.A. Section 6671 (10).

9. **Effective Date:** This ordinance, which has been approved by the Commissioner of Marine Resources, shall become effective after its adoption by the member municipalities provided a certified copy of the ordinance is filed with the Commissioner within twenty (20) days of its adoption.

10. **Severability:** If any section, subsection, sentence or part of this ordinance is for any reason held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining portions of this ordinance.

11. **Repeal:** Any ordinance regulating the harvesting or conservation of shellfish in the member communities and any provisions of any other town ordinance, which is inconsistent with this ordinance, is hereby repealed.

12. **Use of Fees and Fines, Funding:** Fees for shellfish licenses shall be set forth in the Annual Shellfish Management plan and shall accompany the application for the respective license. Fees and fines received shall be used for costs incurred in the enforcement and management of this ordinance.
12.1 **Non-lapse Provision:** Monies in the Municipal Shellfish Account shall not lapse at the end of the year but shall be carried over to the next year in that account.

12.2 **Funding:** The Municipal Shellfish Program shall be self-supporting as much as possible. Funds for operating the Program may be generated by license fees, fines, and financial support from the participating communities.

13. **VIOLATIONS, SUSPENSION OF LICENSES, AND FINES:**
Any person who violates this Ordinance or the policies adopted in the Annual Shellfish Management Plan shall be punished as provided by 12 M.R.S.A. Section 6671 and/or Section 6681. A licensee whose shellfish license has been suspended pursuant to this Ordinance may request return of their license only after the suspension period has expired. A suspended license is not to be returned until the fine is paid in accordance to the court's decree. The suspension of a commercial license shall begin following conviction. Any violation of this Ordinance and/or the Management Plan may result in a license suspension. All suspensions of licenses shall be authorized by the Municipal Joint Board. Any licensee whose license has been suspended pursuant to this Ordinance shall be entitled to a hearing before the Municipal Joint Board upon the filing of a written request for a hearing with the Town Clerk of the Administrative Town within thirty (30) days of the effective date of the suspension. Classifications of, and penalties for, violations are categorized as follows:

13.1 **Stopping for inspection:** A person shall produce their license on demand of any Certified Municipal Shellfish Conservation Warden with a Warden identification and having "probable cause" to take such action. It is unlawful for the operator of a motor vehicle, boat, vessel, or conveyance of any kind, or any person:

A. To deliberately fail or refuse to stop immediately upon request or signal of any Certified Municipal Shellfish Conservation Warden.

B. After the person has stopped, to fail to remain stopped until the said Warden has reached his immediate vicinity and makes known to the operator the reason for his request or signal.

C. To fail or refuse to stand by immediately for inspection on request of said Warden.

D. To throw or dump into any coastal waters or flats after having been requested or signaled to stop by a Certified Municipal Shellfish Conservation Warden any shellfish, or any pail, bag, hod or container before said Warden has inspected the same.

E. To attempt to elude, disobey, or assault any Certified Municipal Shellfish Conservation Warden.

Penalties: The first violation of Section 13.1 of this Ordinance shall result in a one (1) month suspension of the license and a three hundred dollar ($300) fine. The second and subsequent violations of Section 13.1 of this Ordinance shall result in a twelve (12) month suspension of the license and a one thousand dollar ($1000.00) fine.

13.2 **Management Plan:** It is unlawful for any person to violate the Annual Shellfish Management Plan.

Penalties: The first violation of the Annual Shellfish Management Plan shall result in a fine of not less than three hundred dollars ($300.00) and not more than fifteen hundred dollars ($1500.00). The second and subsequent violations of the Annual Shellfish Management Plan
shall result in a fine of not less than five hundred dollars ($500.00) and not more than fifteen hundred dollars ($1500.00).

13.3 **Harvesting Clams in any Closed Area:** It is unlawful for any person to harvest clams in a closed area.

**Penalties:** Any person found guilty of harvesting clams in a closed area shall be subject to a fine of not less than three hundred dollars ($300.00) and not more than fifteen hundred dollars ($1500.00). The second and subsequent violations of harvesting clams in a closed area shall result in a fine of not less than five hundred dollars ($500.00) and not more than fifteen hundred dollars ($1500.00). The second violation of this section of this Ordinance shall result in a thirty (30) day license suspension and the third and subsequent violations shall result in a one hundred and twenty (120) day suspension of the person's license.

13.4 **Minimum Legal Size of Shellfish:** It is unlawful for any person to violate minimum shellfish size regulation set forth in this Ordinance:

**Penalties:** The first violation of Section 7 of this Ordinance shall result in a fine of not less than three hundred dollars ($300.00) and not more than fifteen hundred dollars ($1500.00). The second and subsequent violations of Section 7 of this Ordinance shall result in a fine of not less than five hundred dollars ($500.00) and not more than fifteen hundred dollars ($1500.00). If a person exceeds a fifty percent (50%) threshold of undersized clams as described in Section 7.2 at any time, their license shall be suspended for twelve (12) months and they shall receive a one thousand dollar ($1000.00) fine.

**Penalties:** If a person holding a commercial license uses it to aid and abet the illegal harvest of clams their license shall be suspended for three (3) months and they shall receive a one thousand dollar ($1000) fine upon conviction. Any second and subsequent convictions under this section of the Ordinance shall result in a twelve (12) months suspension and a one thousand dollar ($1000) fine. If a person holding a recreational license uses it to harvest clams commercially, their license shall be suspended for twelve (12) months and they shall receive a one thousand dollar ($1000) fine upon conviction.

13.5 A regional licensee who has had their Maine State license suspended shall forfeit their regional license for the duration of the State suspension. Such a person in possession of shellfish must carry a receipt of purchase for said shellfish.

13.6 **Harvesting without a license:** It is unlawful to harvest shellfish without a license.

**Penalties:** Any person convicted of harvesting shellfish within any of the participating municipalities without a municipal license issued by authority of the Pembroke and Perry Regional Shellfish Ordinance shall be ineligible to apply for any municipal shellfish license for a period of (3) three years from the date of the conviction.

13.7 **Tagging:** The holder of a commercial shellfish license shall identify shellstock the license holder has taken by means of a harvester tag. The tag shall be in accordance with Maine Department of Marine Resources (DMR) rules. Penalties shall be in accordance with DMR regulation.
13.8 **Suspension:** Any shellfish licensee having three convictions for a violation of this ordinance within a three year period shall have their shellfish license suspended for a period of thirty (30) days.

14. **ENFORCEMENT:** This ordinance shall be enforced by the Certified Municipal Shellfish Conservation Warden or any Municipal Shellfish Conservation Warden appointed by the Municipal Joint Board who, within one year of appointment, must be certified by the Commissioner of the Maine DMR.

15. **AMENDMENTS**

15.1 **Initiation:** A proposal for an amendment to this Ordinance may be initiated by the following:

A. A written petition submitted with the number of voters in the participating municipalities equal to at least ten percent of the voters in the last gubernatorial election;

B. A recommendation of the Regional Shellfish Conservation Committee; or

C. A recommendation of the Municipal Joint Board.

15.2 **Procedure:**

A. Any proposal for an amendment shall be made to the Municipal Joint Board, in writing, stating the specific changes requested. All such proposals shall be transmitted to the Regional Shellfish Conservation Committee for their review and recommendation.

B. Within thirty (30) days of receiving a properly initiated amendment, the Municipal Joint Board shall hold a public hearing on the proposal. Notice of the hearing shall be posted and advertised in a newspaper of general circulation within the participating communities at least seven (7) days prior to the hearing. The notice shall contain the time, date and place of the 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.

15.3 **Adoption:** This agreement may be amended after proposed changes have been reviewed by the Department of Marine Resources by a majority vote of the Municipal Joint Board and approved by the legislative bodies of the parties to the agreement (if they choose). Note: Ellsworth’s charter requires Council action.

15.4 **Statute Law Changes:** Any changes to referenced Statue Laws in this Ordinance shall automatically update in this Ordinance upon enactment.

Attest: A true copy of an Ordinance entitled “Pembroke and Perry Regional Shellfish Conservation Ordinance” for the Communities of Pembroke and Perry.

Adopted at the Annual Town Meeting in Perry, August 23, 2011
Adopted at a Special Town Meeting in Pembroke, September 22, 2011

Janice Scanlon
Town Clerk
Town of Pembroke and Perry
TOWN OF PERRY

SHORELAND ZONE ORDINANCE

ADOPTED:
24 Aug 2010
Shoreland Zoning Ordinance for the Municipality of Perry, Maine

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Shoreland Zoning Ordinance for the Municipality of Perry

1. **Purposes.** The purposes of this Ordinance are to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect commercial fishing and maritime industries; to protect freshwater and coastal 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; and to anticipate and respond to the impacts of development in shoreland areas.

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

3. **Applicability.** This Ordinance applies to all land areas within 250 feet, horizontal distance, of the

   - normal high-water line of any great pond,
   - upland edge of a coastal wetland, including all areas affected by tidal action, or
   - upland edge of a freshwater wetland,

   and all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream.

   **NOTE:** Coastal wetlands, by definition, include all areas affected by tidal action, not just those areas where salt marshes and salt meadows exist. Cobble and sand beaches, mudflats, and rocky ledges, below the maximum spring tide are all considered to be coastal wetlands.

4. **Effective Date**

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

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

   **B. Repeal of Municipal Timber Harvesting Regulation.** The municipal regulation of timber harvesting activities is repealed on the statutory date established under 38 M.R.S.A. section 438-A(5), at which time the State of Maine Department of Conservation’s Bureau of Forestry shall administer timber harvesting standards in the shoreland zone. On the date established under 38 M.R.S.A section 438-A(5), the following provisions of this Ordinance are repealed:
• Section 14. Table of Land Uses, Column 3 (Forest management activities except for timber harvesting) and Column 4 (Timber harvesting);
• Section 15(N) in its entirety; and
• Section 17. Definitions, the definitions of “forest management activities” and “residual basal area”.

NOTE: The statutory date established under 38 M.R.S.A. section 438-A(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-A(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.”

5. **Availability.** A certified copy of this Ordinance 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 Ordinance shall be posted.

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

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

8. **Amendments.** This Ordinance 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.

9. **Districts and Zoning Map**

   A. **Official Shoreland Zoning Map.** The areas to which this Ordinance is applicable are hereby divided into the following districts as shown on the Official Shoreland Zoning Map(s) which is (arc) made a part of this Ordinance:

   1. Resource Protection
   2. Limited Residential
   3. Limited Commercial
   4. Commercial Fisheries/Maritime Activities
   5. 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.

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. In the event the municipality does not have a municipal office, the Municipal Clerk shall be the custodian of the map.

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

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.

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.

12. **Non-conformance.**

   **A. Purpose.** It is the intent of this Ordinance to promote land use conformities, except that non-conforming conditions that existed before the effective date of this Ordinance or amendments thereto shall be allowed to continue, subject to the requirements set forth in Section 12. Except as otherwise provided in this Ordinance, a non-conforming condition shall not be permitted to become more non-conforming.

   **B. General**

   (1) Transfer of Ownership. Non-conforming structures, lots, and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this Ordinance.

   (2) Repair and Maintenance. This Ordinance allows, without a permit, the normal upkeep and maintenance of non-conforming uses and structures including repairs or renovations that do not involve expansion of the non-conforming use or structure, and such other changes in a non-conforming use or structure as federal, state, or local building and safety codes may require.

   **NOTE:** See Section 17 for the definitions of non-conforming structures, non-conforming uses and non-conforming lots.

   **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.

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

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

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

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

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

(4) Change of Use of a Non-conforming Structure. The use of a non-conforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater adverse impact on the water body, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use.
In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, 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 Section 12(C)(1)(a) above.

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

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

E. Non-conforming Lots

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

(2) Contiguous Built Lots: If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (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 ordinance, each may be sold on a separate lot provided that the above referenced law and rules are complied with. When such lots are divided each lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance.
(3) Contiguous Lots - Vacant or Partially Built: If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this Ordinance, if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure the lots shall be combined to the extent necessary to meet the dimensional requirements.

This provision shall not apply to 2 or more contiguous lots, at least one of which is non-conforming, owned by the same person or persons on December 14, 1992 and recorded in the registry of deeds if the lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules; and

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

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

13. Establishment of Districts

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

(1) Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes and salt meadows, and wetlands associated with great ponds, 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" shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond, and have a surface elevation at or below the water level of the great pond during the period of normal high water. "Wetlands associated with great ponds" are considered to be part of that great pond.

(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. This district shall also include 100 year floodplains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps.

(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 or coastal 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 adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs.

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

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

D. **Commercial Fisheries/Maritime Activities District.** The Commercial Fisheries/Maritime Activities District includes areas where the existing predominant pattern of development is consistent with the allowed uses for this district as indicated in the Table of Land Uses, Section 14, and other areas which are suitable for functionally water-dependent uses, taking into consideration such factors as:

(1) Shelter from prevailing winds and waves;

(2) Slope of the land within 250 feet, horizontal distance, of the shoreline;

(3) Depth of the water within 150 feet, horizontal distance, of the shoreline;

(4) Available support facilities including utilities and transportation facilities; and

(5) Compatibility with adjacent upland uses.

E. **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 within two hundred and fifty (250) feet, horizontal distance, of the upland edge of a freshwater or coastal 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. **Table of Land Uses.** All land use activities, as indicated in Table 1, Land Uses in the Shoreland Zone, shall conform with all of the applicable land use standards in Section 15. The district designation for a particular site shall be determined from the Official Shoreland Zoning Map.
Shoreland Zoning Ordinance for the Town of Perry, ME

Key to Table 1:
Yes - Allowed (no permit required but the use must comply with all applicable land use standards.)
No - Prohibited
PB - Allowed with permit issued by the Planning Board.
CEO - Allowed with permit issued by the Code Enforcement Officer
LPI - Allowed with permit issued by the Local Plumbing Inspector

Abbreviations:
RP - Resource Protection
LR - Limited Residential
LC - Limited Commercial
CFMA - Commercial Fisheries/Maritime Activities
SP - Stream Protection

The following notes are applicable to the Land Uses Table on the following page:

NOTE: The term “functionally water-dependent use” as defined, includes a very diverse group of uses ranging from large, industrial facilities that receive shipments by water or use water for cooling, to traditional commercial fishing enterprises, and public shorefront parks. Communities are encouraged to define the functionally water-dependent uses which are to be allowed and which are prohibited in each CFMA district, based on considerations of prevailing existing uses, desired future uses, available support facilities, site suitability and compatibility with adjacent uses. A municipality can narrow the range of allowed uses by precluding certain functionally water-dependent uses, or by adopting conditional uses for certain functionally water-dependent uses that it determines would only be compatible with its plan for the waterfront under certain conditions.

NOTE: Recreational water-dependent uses such as marinas and excursion vessels may, in some communities, displace or threaten to displace traditional commercial fisheries and maritime activities. Therefore communities may wish to preclude or further limit these types of uses in this district in order to protect berthing space and onshore staging areas for commercial fishing enterprises.
### TABLE 1. LAND USES IN THE SHORELAND ZONE

<table>
<thead>
<tr>
<th>LAND USES</th>
<th>SP</th>
<th>RP</th>
<th>LR</th>
<th>LC</th>
<th>CFMA</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Non-intensive recreational uses not requiring structures such as</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>hunting, fishing and hiking</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Motorized vehicular traffic on existing roads and trails</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>3. Forest management activities except for timber harvesting</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>4. Timber harvesting</td>
<td>yes</td>
<td>CEO</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>5. Clearing or removal of vegetation for activities other than timber</td>
<td>CEO</td>
<td>CEO</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>harvesting</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Fire prevention activities</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>7. Wildlife management practices</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>8. Soil and water conservation practices</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>9. Mineral exploration</td>
<td>no</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>10. Mineral extraction including sand and gravel extraction</td>
<td>no</td>
<td>no</td>
<td>no</td>
<td>no</td>
<td>no</td>
</tr>
<tr>
<td>11. Surveying and resource analysis</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>12. Emergency operations</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>13. Agriculture</td>
<td>yes</td>
<td>PB</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>14. Aquaculture</td>
<td>PB</td>
<td>PB</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>15. Principal structures and uses</td>
<td>PB</td>
<td>PB</td>
<td>CEO</td>
<td>CEO</td>
<td>no</td>
</tr>
<tr>
<td>A. One and two family residential, including driveways</td>
<td>PB</td>
<td>PB</td>
<td>CEO</td>
<td>CEO</td>
<td>no</td>
</tr>
<tr>
<td>B. Multi-unit residential</td>
<td>no</td>
<td>no</td>
<td>PB</td>
<td>PB</td>
<td>no</td>
</tr>
<tr>
<td>C. Commercial</td>
<td>no</td>
<td>no</td>
<td>no</td>
<td>no</td>
<td>PB</td>
</tr>
<tr>
<td>D. Industrial</td>
<td>no</td>
<td>no</td>
<td>no</td>
<td>no</td>
<td>no</td>
</tr>
<tr>
<td>E. Governmental and institutional</td>
<td>no</td>
<td>no</td>
<td>PB</td>
<td>PB</td>
<td>PB</td>
</tr>
<tr>
<td>F. Small non-residential facilities for educational, scientific, or</td>
<td>no</td>
<td>no</td>
<td>PB</td>
<td>PB</td>
<td>PB</td>
</tr>
<tr>
<td>nature interpretation purposes</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16. Structures accessory to allowed uses</td>
<td>PB</td>
<td>PB</td>
<td>CEO</td>
<td>CEO</td>
<td>yes</td>
</tr>
<tr>
<td>17. Conversions of seasonal residences to year-round residences</td>
<td>LPI</td>
<td>LPI</td>
<td>LPI</td>
<td>LPI</td>
<td>no</td>
</tr>
<tr>
<td>18. Home occupations</td>
<td>PB</td>
<td>PB</td>
<td>PB</td>
<td>CEO</td>
<td>yes</td>
</tr>
<tr>
<td>19. Private sewage disposal systems for allowed uses</td>
<td>LPI</td>
<td>LPI</td>
<td>LPI</td>
<td>LPI</td>
<td>LPI</td>
</tr>
<tr>
<td>20. Essential services</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A. Roadside distribution lines (34.5kV and lower)</td>
<td>CEO</td>
<td>CEO</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>B. Non-roadside or cross-country distribution lines involving ten poles</td>
<td>PB</td>
<td>PB</td>
<td>CEO</td>
<td>CEO</td>
<td>yes</td>
</tr>
<tr>
<td>or less in the shoreline zone</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>C. Non-roadside or cross-country distribution lines involving eleven or</td>
<td>PB</td>
<td>PB</td>
<td>PB</td>
<td>PB</td>
<td>PB</td>
</tr>
<tr>
<td>more poles in the shoreland zone</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>D. Other essential services</td>
<td>PB</td>
<td>PB</td>
<td>PB</td>
<td>PB</td>
<td>PB</td>
</tr>
<tr>
<td>21. Service drops, as defined, to allowed uses</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>22. Public and private recreational areas involving minimal structural</td>
<td>PB</td>
<td>PB</td>
<td>CEO</td>
<td>CEO</td>
<td>yes</td>
</tr>
<tr>
<td>development</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>23. Individual, private campsites</td>
<td>CEO</td>
<td>CEO</td>
<td>CEO</td>
<td>CEO</td>
<td>CEO</td>
</tr>
<tr>
<td>24. Campgrounds</td>
<td>no</td>
<td>no</td>
<td>PB</td>
<td>PB</td>
<td>no</td>
</tr>
<tr>
<td>25. Road construction</td>
<td>no</td>
<td>no</td>
<td>PB</td>
<td>PB</td>
<td>PB</td>
</tr>
<tr>
<td>26. Parking facilities</td>
<td>no</td>
<td>no</td>
<td>PB</td>
<td>PB</td>
<td>PB</td>
</tr>
<tr>
<td>27. Marinas</td>
<td>PB</td>
<td>no</td>
<td>PB</td>
<td>PB</td>
<td>PB</td>
</tr>
<tr>
<td>28. Filling and earthmoving of &lt;10 cubic yards</td>
<td>CEO</td>
<td>CEO</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>29. Filling and earthmoving of &gt;10 cubic yards</td>
<td>CEO</td>
<td>CEO</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>30. Signs</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>31. Uses similar to allowed uses</td>
<td>CEO</td>
<td>CEO</td>
<td>CEO</td>
<td>CEO</td>
<td>CEO</td>
</tr>
<tr>
<td>32. Uses similar to uses requiring a CEO permit</td>
<td>CEO</td>
<td>CEO</td>
<td>CEO</td>
<td>CEO</td>
<td>CEO</td>
</tr>
<tr>
<td>33. Uses similar to uses requiring a PB permit</td>
<td>PB</td>
<td>PB</td>
<td>PB</td>
<td>PB</td>
<td>PB</td>
</tr>
</tbody>
</table>

1. In RP not allowed within 75 feet horizontal distance, of the normal high-water line of great ponds, except to remove safety hazards.
2. Requires permit from the Code Enforcement Officer if more than 100 square feet of surface area, in total, is disturbed.
3. In RP not allowed in areas so designated because of wildlife value.
4. Provided that a variance from the setback requirement is obtained from the Board of Appeals.
5. Functionally water-dependent uses and uses accessory to such water dependent uses only (See note on previous page).
6. See further restrictions in Section 15(K)(2).
7. Except when area is zoned for resource protection due to floodplain criteria in which case a permit is required from the PB.
8. Except as provided in Section 15(G)(4).
9. Single family residential structures may be allowed by special exception only according to the provisions of Section 16(E), Special

**NOTE:** A person performing any of the following activities shall require a permit from the Department of Environmental Protection, pursuant to 38 M.R.S.A. section 480-C, if the activity occurs in, on, over or adjacent to any freshwater or coastal wetland, great pond, stream or brook and operates in such a manner that material or soil may be washed into them:

- Drifting, bulldozing, removing or displacing soil, sand, vegetation or other materials;
- Draining or otherwise dewatering;
- Certain other activities as listed in this Table, such as marinas and campgrounds, that are allowed in the respective district.

Lakes, ponds, and other water bodies are subjected to the same restrictions as the shoreland zone.
Shoreland Zoning Ordinance for the Town of Perry, ME

C. Filling, including adding sand or other material to a sand dune; or
D. Any construction or alteration of any permanent structure.

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

NOTE: Municipalities should review the land use standards contained herein to determine whether they will result in a scale of development that is compatible with existing development or with the future desired scale of development. If not, more restrictive land use standards may be adopted by the municipality.

A. Minimum Lot Standards

(1) (a) Residential per dwelling unit
   (i) Within the Shoreland Zone Adjacent to Tidal Areas
       Minimum Lot Area (sq. ft.) 30,000
       Minimum Shore Frontage (ft.) 150
   (ii) Within the Shoreland Zone Adjacent to Non-Tidal Areas
       Minimum Lot Area (sq. ft.) 40,000
       Minimum Shore Frontage (ft.) 200

   (b) Governmental, Institutional, Commercial or Industrial per principal structure
      (i) Within the Shoreland Zone Adjacent to Tidal Areas, Exclusive of Those Areas Zoned for Commercial Fisheries and Maritime Activities
          Minimum Lot Area (sq. ft.) 40,000
          Minimum Shore Frontage (ft.) 200
      (ii) Within the Shoreland Zone Adjacent to Tidal Areas Zoned for Commercial Fisheries and Maritime Activities
          Minimum Lot Area (sq. ft.) NONE
          Minimum Shore Frontage (ft.) NONE
      (iii) Within the Shoreland Zone Adjacent to Non-tidal Areas
            Minimum Lot Area (sq. ft.) 60,000
            Minimum Shore Frontage (ft.) 300

   (c) Public and Private Recreational Facilities
      (i) Within the Shoreland Zone Adjacent to Tidal and Non-Tidal Areas
          Minimum Lot Area (sq. ft.) 40,000
          Minimum Shore Frontage (ft.) 200

(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 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, except that in the Commercial Fisheries/Maritime Activities District there shall be no minimum setback. 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) For principal structures, water and wetland setback measurements shall be taken from the top of a coastal bluff that has been identified on Coastal Bluff maps as being "highly unstable" or "unstable" by the Maine Geological Survey pursuant to its "Classification of Coastal Bluffs" and published on the most recent Coastal Bluff map. If the applicant and the permitting official(s) are in disagreement as to the specific location of a "highly unstable" or "unstable" bluff, or where the top of the bluff is located, the applicant may at his or her expense, employ a Maine Registered Professional Engineer, a Maine Certified Soil Scientist, a Maine State Geologist, or other qualified individual to make a determination. If agreement is still not reached, the applicant may appeal the matter to the board of appeals.

(c) 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 nor 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: All tidal land which is subject to tidal action during the maximum spring tide is coastal wetland.

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, Limited Commercial, and Stream Protection Districts, shall not exceed thirty-five (35) feet in height. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.

(3) The lowest floor elevation or openings of all buildings and structures, including basements, shall be elevated at least one foot above the elevation of the 100 year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent floodplain 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 Commercial Fisheries/Maritime Activities District, where lot coverage shall not exceed seventy (70) percent.

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

(a) The site has been previously altered and an effective vegetated buffer does not exist;

(b) The wall(s) is(are) at least 25 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;

(b) The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;

(c) The total height of the wall(s), in the aggregate, are no more than 24 inches;

(e) Retaining walls are located outside of the 100-year floodplain on rivers, streams, coastal wetlands, and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent floodplain soils.

(f) The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and

(g) A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:
(i) The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;

(ii) Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;

(iii) Only native species may be used to establish the buffer area;

(iv) A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;

(v) A footpath not to exceed the standards in Section 15(O)(2)(a), may traverse the buffer;

NOTE: If the wall and associated soil disturbance occurs within 75 feet, horizontal distance, of a water body, tributary stream or coastal wetland, a permit pursuant to the Natural Resource Protection Act is required from the Department of Environmental Protection.

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

C. 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 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.

D. Individual Private Campsites. Individual private campsites not associated with campgrounds are allowed provided the following conditions are met:

(1) One campsite per lot existing on the effective date of this Ordinance, or 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 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.

E. Commercial and Industrial Uses. The following new commercial and industrial uses are prohibited within the shoreland zone adjacent to great ponds:

(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

(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
F. Parking Areas

(1) Parking areas shall meet the shoreline and tributary stream setback requirements for structures for the district in which such areas are located, except that in the Commercial Fisheries/Maritime Activities District parking areas shall be set back at least twenty-five (25) feet, horizontal distance, from the shoreline. The setback requirement for parking areas serving public boat launching facilities in Districts other than the Commercial Fisheries/Maritime Activities 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 prevent stormwater runoff from flowing directly into a water body, tributary stream or wetland and where feasible, to retain all runoff on-site.

(3) In determining the appropriate size of proposed parking facilities, the following shall apply:

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

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

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

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

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

(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:

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

(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.

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

(1) Signs relating to goods and services sold on the premises shall be allowed, provided that such signs shall not exceed six (6) square feet in area and shall not exceed two (2) signs per premises. In the Limited Commercial District, however, such signs shall not exceed sixteen (16) square feet in area. 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.

I. Storm Water Runoff

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

(2) Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.

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

J. 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.

K. 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.

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

Mineral extraction may be permitted under the following conditions:

(1) A reclamation plan shall be filed with, and approved, by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of Section 15 (L)(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 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.
   (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 Ordinance, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.

M. Agriculture

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

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

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

(4) There shall be no new tilling of soil within one-hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within seventy-five (75) feet, horizontal distance, from other water bodies and coastal wetlands; nor within twenty-five (25) feet, horizontal distance, of tributary streams and freshwater wetlands. Operations in existence on the effective date of this ordinance and not in conformance with this provision may be maintained.

(5) Newly established livestock grazing areas shall not be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within seventy-five (75) feet, horizontal distance, of other water bodies and coastal wetlands, nor; within twenty-five (25) 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.
N. Timber Harvesting

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

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

(1) The ground is frozen;
(2) There is no resultant soil disturbance;
(3) The removal of trees is accomplished using a cable or boom and there is no entry of tracked or wheeled vehicles into the 75-foot strip of land;
(4) There is no cutting of trees less than 6 inches in diameter; no more than 30% of the trees 6 inches or more in diameter, measured at 4 \( \frac{1}{2} \) feet above ground level, are cut in any 10-year period; and a well-distributed stand of trees and other natural vegetation remains; and
(5) A licensed professional forester has marked the trees to be harvested prior to a permit being issued by the municipality.

(b) Below the 75 foot strip referred to in Section 15(N)(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 \( \frac{1}{2} \) 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 15(N)(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 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 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) Timber harvesting operations exceeding the 40% limitation in Section 15(N)(2)(a) above, may be allowed by the planning board upon a clear showing, including a forest management plan signed by a Maine licensed professional forester, that such an
exception is necessary for good forest management and will be carried out in accordance with the purposes of this Ordinance. The planning board shall notify the Commissioner of the Department of Environmental Protection of each exception allowed, within fourteen (14) days of the planning board's decision.

(c) No accumulation of slash shall be left within fifty (50) feet, horizontal distance, of the normal high-water line of a water body. In all other areas slash shall either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than four (4) feet above the ground. Any debris that falls below the normal high-water line of a water body or tributary stream shall be removed.

(d) Timber harvesting equipment shall not use stream channels as travel routes except when:

(i) Surface waters are frozen; and

(ii) The activity will not result in any ground disturbance.

(e) All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.

(f) Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil revegetated.

(g) Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least seventy-five (75) feet, horizontal distance, in width for slopes up to ten (10) percent shall be retained between the exposed mineral soil and the normal high-water line of a water body or upland edge of a wetland. For each ten (10) percent increase in slope, the unscarified strip shall be increased by twenty (20) feet, horizontal distance. The provisions of this paragraph apply only to a face sloping toward the water body or wetland, provided, however, that no portion of such exposed mineral soil on a back face shall be closer than twenty five (25) feet, horizontal distance, from the normal high-water line of a water body or upland edge of a wetland.

O. Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting

(1) In a Resource Protection District abutting a great pond, there shall be no cutting of vegetation within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards.

Elsewhere, in any Resource Protection District the cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized in that district.

(2) Except in areas as described in Section O(1), above, and except to allow for the development of permitted uses, within a strip of land extending one-hundred (100) feet, horizontal distance, inland from the normal high-water line of a great pond and seventy-five (75) feet,
horizontal distance, from any other water body, tributary stream, or the upland edge of a
wetland, a buffer strip of vegetation shall be preserved as follows:

(a) There shall be no cleared opening greater than 250 square feet in the forest canopy (or
other existing woody vegetation if a forested canopy is not present) as measured from the
outer limits of the tree or shrub crown. However, a footpath not to exceed six (6) feet in
width as measured between tree trunks and/or shrub stems is allowed provided that a
cleared line of sight to the water through the buffer strip is not created.

(b) Selective cutting of trees within the buffer strip is allowed provided that a well-
distributed stand of trees and other natural vegetation is maintained. For the purposes of
Section 15(O)(2)(b) a "well-distributed stand of trees" adjacent to a great pond shall be
defined as maintaining a rating score of 24 or more in each 25-foot by 50-foot rectangular
(1250 square feet) area as determined by the following rating system.

<table>
<thead>
<tr>
<th>Diameter of Tree at 4-1/2 feet Above Ground Level (inches)</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 &lt; 4 in.</td>
<td>1</td>
</tr>
<tr>
<td>4 &lt; 8 in.</td>
<td>2</td>
</tr>
<tr>
<td>8 &lt; 12 in.</td>
<td>4</td>
</tr>
<tr>
<td>12 in. or greater</td>
<td>8</td>
</tr>
</tbody>
</table>

Adjacent to other water bodies, tributary streams, and wetlands, a "well-distributed stand
of trees" is defined as maintaining a minimum rating score of 16 per 25-foot by 50-foot
rectangular area.

NOTE: As an example, adjacent to a great pond, if a 25-foot x 50-foot plot contains four (4)
trees between 2 and 4 inches in diameter, two trees between 4 and 8 inches in
diameter, three trees between 8 and 12 inches in diameter, and two trees over 12
inches in diameter, the rating score is:

\[(4 \times 1) + (2 \times 2) + (3 \times 4) + (2 \times 8) = 36 \text{ points}\]

Thus, the 25-foot by 50-foot plot contains trees worth 36 points. Trees totaling 12
points \((36 - 24 = 12)\) may be removed from the plot provided that no cleared openings
are created.

The following shall govern in applying this point system:

(i) The 25-foot by 50-foot rectangular plots must be established where the
landowner or lessee proposes clearing within the required buffer;
(ii) Each successive plot must be adjacent to, but not overlap a previous plot;
(iii) Any plot not containing the required points must have no vegetation removed
except as otherwise allowed by this Ordinance;
(iv) Any plot containing the required points may have vegetation removed down to
the minimum points required or as otherwise allowed by this Ordinance;
(v) Where conditions permit, no more than 50% of the points on any 25-foot by 50-
foot rectangular area may consist of trees greater than 12 inches in diameter.
For the purposes of Section 15(P)(2)(b) "other natural vegetation" is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one half (4 1/2) feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 5 saplings have been recruited into the plot.

Notwithstanding the above provisions, no more than 40% of the total volume of trees four (4) inches or more in diameter, measured at 4 1/2 feet above ground level may be removed in any ten (10) year period.

(c) In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or other permitted uses as described in Section 15(P) paragraphs (2) and (2)(a) above.

(d) Pruning of tree branches, on the bottom 1/3 of the tree is allowed.

(e) In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.

Section 15(P)(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.

3) At distances greater than one hundred (100) feet, horizontal distance, from a great pond and seventy-five (75) feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland, there shall be allowed on any lot, in any ten (10) year period, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty (40) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.

In no event shall cleared openings for any purpose, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, 25% of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, including land previously cleared. This provision shall not apply to the Commercial Fisheries/Maritime Activities Districts.

(4) Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Ordinance.

(5) Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section 15(O).

P. Erosion and Sedimentation Control

(1) All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall also require a written soil
erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:

(a) Mulching and revegetation of disturbed soil.

(b) Temporary runoff control features such as hay bales, silt fencing or diversion ditches.

(c) Permanent stabilization structures such as retaining walls or riprap.

(2) In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.

(3) Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.

(4) Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases permanent stabilization shall occur within nine (9) months of the initial date of exposure. In addition:

(a) Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.

(b) Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.

(c) Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.

(5) Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainageways shall be designed and constructed in order to carry water from a twenty five (25) year storm or greater, and shall be stabilized with vegetation or lined with riprap.

Q. 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.
R. 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.

S. 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.

16. Administration

A. Administering Bodies and Agents

(1) Code Enforcement Officer. A Code Enforcement Officer shall be appointed or reappointed annually by July 1st.

(2) Board of Appeals. A Board of Appeals shall be created in accordance with the provisions of 30-A M.R.S.A. section 2691.

(3) Planning Board. A Planning Board shall be created in accordance with the provisions of State law.

B. Permits Required. After the effective date of this Ordinance no person shall, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit in the district in which such activity or use would occur; or expand, change, or replace an existing use or structure; or renew a discontinued nonconforming use. A person who is issued a permit pursuant to this Ordinance shall have a copy of the permit on site while the work authorized by the permit is performed.

(1) A permit is not required for the replacement of an existing road culvert as long as:

(a) The replacement culvert is not more than 25% longer than the culvert being replaced;

(b) The replacement culvert is not longer than 75 feet; and

(c) Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the watercourse.

(2) A permit is not required for an archaeological excavation as long as the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's level 1 or level 2 approved list, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.

(3) Any permit required by this Ordinance shall be in addition to any other permit required by other law or ordinance.

C. Permit Application
Shoreland Zoning Ordinance for the Town of Perry, ME

(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.

(2) All applications shall be signed by an owner or individual who can show evidence of right, title or interest in the property or by an agent, representative, tenant, or contractor of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct.

(3) All applications shall be dated, and the Code Enforcement Officer or Planning Board, as appropriate, shall note upon each application the date and time of its receipt.

(4) If the property is not served by a public sewer, a valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the Plumbing Inspector, shall be submitted whenever the nature of the proposed structure or use would require the installation of a subsurface sewage disposal system.

D. Procedure for Administering Permits. Within 35 days of the date of receiving a written application, the Planning Board or Code Enforcement Officer, as indicated in Section 14, shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete. The Planning Board or the Code Enforcement Officer, as appropriate, shall approve, approve with conditions, or deny all permit applications in writing within 35 days of receiving a completed application. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within 35 days after the first available date on the Planning Board's agenda following receipt of the completed application, or within 35 days of the public hearing, if the proposed use or structure is found to be in conformance with the purposes and provisions of this Ordinance.

The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance.

After the submission of a complete application to the Planning Board, the Board shall approve an application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use:

(1) Will maintain safe and healthful conditions;

(2) Will not result in water pollution, erosion, or sedimentation to surface waters;

(3) Will adequately provide for the disposal of all wastewater;

(4) Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;

(5) Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;

(6) Will protect archaeological and historic resources as designated in the comprehensive plan;
(7) Will not adversely affect existing commercial fishing or maritime activities in a Commercial Fisheries/Maritime Activities district;

(8) Will avoid problems associated with floodplain development and use; and

(9) Is in conformance with the provisions of Section 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.

E. Special Exceptions. In addition to the criteria specified in Section 16(D) above, excepting structure setback requirements, the Planning Board may approve a permit for a single family residential structure in a Resource Protection District provided that the applicant demonstrates that all of the following conditions are met:

(1) There is no location on the property, other than a location within the Resource Protection District, where the structure can be built.

(2) The lot on which the structure is proposed is undeveloped and was established and recorded in the registry of deeds of the county in which the lot is located before the adoption of the Resource Protection District.

(3) All proposed buildings, sewage disposal systems and other improvements are:

   (a) Located on natural ground slopes of less than 20%; and

   (b) Located outside the floodway of the 100-year floodplain along rivers and artificially formed great ponds along rivers and outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps; all buildings, including basements, are elevated at least one foot above the 100-year floodplain elevation; and the development is otherwise in compliance with any applicable municipal floodplain ordinance.

If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be 1/2 the width of the 100-year floodplain.

(4) The total ground-floor area, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance.

(5) All structures, except functionally water-dependent structures, are set back from the normal high-water line of a water body, tributary stream or upland edge of a wetland to the greatest practical extent, but not less than 75 feet, horizontal distance. In determining the greatest practical extent, the Planning Board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the floodplain, and its proximity to moderate-value and high-value wetlands.
F. Expiration of Permit. Permits shall expire one year from the date of issuance if a substantial start is not made in construction or in the use of the property during that period. If a substantial start is made within one year of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire.

G. Installation of Public Utility Service. 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 Ordinance has been issued by the appropriate municipal officials or other written arrangements have been made between the municipal officials and the utility.

H. Appeals

(1) Powers and Duties of the Board of Appeals. The Board of Appeals shall have the following powers:

(a) Administrative Appeals: To hear and decide administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Planning Board in the administration of this Ordinance; and to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Code Enforcement Officer in his or her review of and action on a permit application under this Ordinance. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this ordinance is not appealable to the Board of Appeals.

(b) Variance Appeals: To authorize variances upon appeal, within the limitations set forth in this Ordinance.

(2) Variance Appeals. Variances may be granted only under the following conditions:

(a) Variances may be granted only from dimensional requirements including, but not limited to, lot width, structure height, percent of lot coverage, and setback requirements.

(b) Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.

(c) The Board shall not grant a variance unless it finds that:

(i) The proposed structure or use would meet the provisions of Section 15 except for the specific provision which has created the non-conformity and from which relief is sought; and

(ii) The strict application of the terms of this Ordinance 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(H)(2)(c)(ii) above, the Board of Appeals may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the dwelling" shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

(e) The Board of Appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.

(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.

When the Board of Appeals hears a decision of the Planning Board, it shall hold an appellate hearing, and may reverse the decision of the Planning Board only upon finding that the decision was contrary to specific provisions of the Ordinance or contrary to the facts presented to the Planning Board. The Board of Appeals may only review the record of the proceedings before the Planning Board. The Board Appeals shall not receive or consider any evidence which was not presented to the Planning Board, but the Board of Appeals may receive and consider written or oral arguments. If the Board of Appeals determines that the record of the Planning Board proceedings are inadequate, the Board of Appeals may remand the matter to the Planning Board for additional fact finding.

(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 or the Planning Board, except for enforcement-related matters as described in Section 16(H)(1)(a) above. Such an appeal shall be taken within thirty (30) days of the date of the official, written decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement.

(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 or Planning Board, 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.

I. Enforcement

(1) Nuisances. Any violation of this Ordinance 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 Ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal 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 ensure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance.

(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 Ordinance 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 Ordinance and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal
structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.

(4) Fines. Any person, including but not limited to a landowner, a landowner's agent or a contractor, who violates any provision or requirement of this Ordinance shall be penalized in accordance with 30-A, M.R.S.A. section 4452.

NOTE: Current penalties include fines of not less than $100 nor more than $2500 per violation for each day that the violation continues. However, in a resource protection district the maximum penalty is increased to $5000 (38 M.R.S.A. section 4452).

17. Definitions.

Accessory structure or use - a use or structure which is incidental and subordinate to the principal use or structure. Accessory uses, when aggregated, shall not subordinate the principal use of the lot. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure.

Aggrieved party - an owner of land whose property is directly or indirectly affected by the granting or denial of a permit or variance under this Ordinance; a person whose land abuts land for which a permit or variance has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or variance.

Agriculture - the production, keeping or maintenance for sale or lease, of plants and/or animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and greenhouse products. Agriculture does not include forest management and timber harvesting activities.

Aquaculture - the growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

Basal Area - the area of cross-section of a tree stem at 4 1/2 feet above ground level and inclusive of bark.

Basement - 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.

Boat Launching Facility - a facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.

Campground - any area or tract of land to accommodate two (2) or more parties in temporary living quarters, including, but not limited to tents, recreational vehicles or other shelters.

Canopy - the more or less continuous cover formed by tree crowns in a wooded area.

Coastal wetland - all tidal and subtidal lands; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land that is subject to tidal action during the highest tide level for the year in
which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

NOTE: All areas below the maximum spring tide level are coastal wetlands. These areas may consist of rocky ledges, sand and cobble beaches, mud flats, etc., in addition to salt marshes and salt meadows.

Commercial use - the use of lands, buildings, or structures, other than a "home occupation," defined below, the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units.

DBH – the diameter of a standing tree measured 4.5 feet from ground level.

Development – a change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring.

Dimensional requirements – numerical standards relating to spatial relationships including but not limited to setback, lot area, shore frontage and height.

Disability - any disability, infirmity, malformation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness; and also includes the physical or mental condition of a person which constitutes a substantial handicap as determined by a physician or in the case of mental handicap, by a psychiatrist or psychologist, as well as any other health or sensory impairment which requires special education, vocational rehabilitation or related services.

Driveway - a vehicular access-way less than five hundred (500) feet in length serving two single-family dwellings or one two-family dwelling, or less.

Emergency operations - operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property and livestock from the threat of destruction or injury.

Essential services - gas, electrical or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services.

Expansion of a structure - an increase in the floor area or volume of a structure, including all extensions such as, but not limited to: attached decks, garages, porches and greenhouses.

Expansion of use - the addition of one or more months to a use's operating season; or the use of more floor area or ground area devoted to a particular use.

Family - one or more persons occupying a premises and living as a single housekeeping unit.

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.

Forested wetland - a freshwater wetland dominated by woody vegetation that is six (6) meters tall (approximately twenty (20) feet) or taller.

Foundation - the supporting substructure of a building or other structure, excluding wooden sills and post supports, but including basements, slabs, frostwalls, or other base consisting of concrete, block, brick or similar material.

Freshwater wetland - freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are:

1. Of ten or more contiguous acres; or of less than 10 contiguous acres and adjacent to a surface water body, excluding any stream or brook, such that in a natural state, the combined surface area is in excess of 10 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.

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, coastal or 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 coastal or inland waters.

Great pond - any inland body of water which in a natural state has a surface area in excess of ten acres, and any inland body of water artificially formed or increased which has a surface area in excess of thirty (30) acres except for the purposes of this Ordinance, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner,

Ground cover - small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor.

Height of a structure - the vertical distance between the mean original (prior to construction) grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances that have no floor area.
Home occupation - an occupation or profession which is customarily conducted on or in a residential structure or property and which is 1) clearly incidental to and compatible with the residential use of the property and surrounding residential uses; and 2) which employs no more than two (2) persons other than family members residing in the home.

Increase in nonconformity of a structure - any change in a structure or property which causes further deviation from the dimensional standard(s) creating the nonconformity such as, but not limited to, reduction in water body, tributary stream or wetland setback distance, increase in lot coverage, or increase in height of a structure. Property changes or structure expansions which either meet the dimensional standard or which cause no further increase in the linear extent of nonconformance of the existing structure shall not be considered to increase nonconformity. For example, there is no increase in nonconformity with the setback requirement for water bodies, wetlands, or tributary streams if the expansion extends no further into the required setback area than does any portion of the existing nonconforming structure. Hence, a structure may be expanded laterally provided that the expansion extends no closer to the water body, tributary stream, or wetland than the closest portion of the existing structure from that water body, tributary stream, or wetland. Included in this allowance are expansions which in-fill irregularly shaped structures.

Individual private campsite - an area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed ten (10) individuals and which involves site improvements which may include but not be limited to a gravel pad, parking area, fire place, or tent platform.

Industrial - The assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or the extraction of minerals.

Institutional – a non-profit or quasi-public use, or institution such as a church, library, public or private school, hospital, or municipally owned or operated building, structure or land used for public purposes.

Lot area - The area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and areas beneath roads serving more than two lots.

Marina - a business establishment having frontage on navigable water and, as its principal use, providing for hire offshore moorings or docking facilities for boats, and which may also provide accessory services such as boat and related sales, boat repair and construction, indoor and outdoor storage of boats and marine equipment, bait and tackle shops and marine fuel service facilities.

Market value - the estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

Mineral exploration - hand sampling, test boring, or other methods of determining the nature or extent of mineral resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition.

Mineral extraction - any operation within any twelve (12) month period which removes more than one hundred (100) cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and to transport the product removed, away from the extraction site.
Minimum lot width - the closest distance between the side lot lines of a lot. When only two lot lines extend into the shoreland zone, both lot lines shall be considered to be side lot lines.

Multi-unit residential - a residential structure containing three (3) or more residential dwelling units.

Native – indigenous to the local forests.

Non-conforming condition – non-conforming lot, structure or use which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendment took effect.

Non-conforming lot - a single lot of record which, at the effective date of adoption or amendment of this Ordinance, does not meet the area, frontage, or width requirements of the district in which it is located.

Non-conforming structure - a structure which does not meet any one or more of the following dimensional requirements; setback, height, or lot coverage, but which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

Non-conforming use - use of buildings, structures, premises, land or parts thereof which is not allowed in the district in which it is situated, but which is allowed to remain solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

Normal high-water line (non-tidal 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. Areas contiguous with 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 great pond during the period of normal high-water are considered part of the great pond.

NOTE: Adjacent to tidal waters, setbacks are measured from the upland edge of the “coastal wetland.”

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.

Principal structure - a building other than one which is used for purposes wholly incidental or accessory to the use of another building or use on the same premises.

Principal use - a use other than one which is wholly incidental or accessory to another use on the same premises.

Public facility - any facility, including, but not limited to, buildings, property, recreation areas, and roads, which are owned, leased, or otherwise operated, or funded by a governmental body or public entity.

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

Fryeburg     Hadley     Limerick
Recreational facility - a place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, excluding boat launching facilities.

Recreational vehicle - a vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pick-up camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the unit must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles.

Replacement system - a system intended to replace: 1.) an existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure, or 2.) any existing overboard wastewater discharge.

Residential dwelling unit - a room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not residential dwelling units.

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

Riprap - rocks, irregularly shaped, and at least six (6) inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two (2) units horizontal to one (1) unit vertical or less.

Road - a route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles, excluding a driveway as defined.

Salt marsh - Areas of coastal wetland (most often along coastal bays) that support salt tolerant species, and where at average high tide during the growing season, the soil is irregularly inundated by tidal waters. The predominant species is saltmarsh cordgrass (Spartina alterniflora). More open areas often support widgeon grass, celgrass, and Sago pondweed.

Salt meadow - Areas of a coastal wetland that support salt tolerant plant species bordering the landward side of salt marshes or open coastal water, where the soil is saturated during the growing season but which is rarely inundated by tidal water. Indigenous plant species include salt meadow cordgrass (Spartina patens) and black rush; common threesquare occurs in fresher areas.

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 nearest horizontal distance from the normal high-water line of a water body or tributary stream, or upland edge of a wetland, to the nearest part of a structure, road, parking space or other regulated object or area.

Shore frontage - the length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline.

Shoreland zone - the land area located within two hundred and fifty (250) feet, horizontal distance, of the normal high-water line of any great pond; within 250 feet, horizontal distance, of the upland edge of a coastal wetland, including all areas affected by tidal action; within 250 feet of the upland edge of a freshwater wetland; or within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream.

Shoreline - the normal high-water line, or upland edge of a freshwater or coastal wetland.

Stream - a free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within the shoreland area.

Structure - anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences, and poles, wiring and other aerial equipment normally associated with service drops as well as guyed and guy anchors. The term includes structures temporarily or permanently located, such as decks, patios, and satellite dishes.

Substantial start - completion of thirty (30) percent of a permitted structure or use measured as a percentage of estimated total cost.

Subsurface sewage disposal system - any system designed to dispose of waste or waste water on or beneath the surface of the earth; includes, but is not limited to: septic tanks; disposal fields; grandfathered cesspools; holding tanks; pretreatment filter, piping, or any other fixture, mechanism, or apparatus used for those purposes; does not include any discharge system licensed under 38 M.R.S.A. section 414, any surface waste water disposal system, or any municipal or quasi-municipal sewer or waste water treatment system.
Sustained slope - a change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.

Tidal waters - all waters affected by tidal action during the highest annual tide.

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

Tributary stream - means a channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically with other water bodies. "Tributary stream" 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.

Upland edge of a wetland - the boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the highest annual tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are six (6) meters (approximately twenty (20) foot) tall or taller.

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

Velocity zone - an area of special flood hazard extending from offshore to the inland limit of the primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

Volume of a structure - the volume of all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof.

Water body - any great pond, river or stream.

Water crossing - any project extending from one bank to the opposite bank of a river, stream, tributary stream, or wetland whether under, through, or over the water or wetland. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings. This definition includes crossings for timber harvesting equipment and related activities.
Wetland - a freshwater or coastal wetland.

Woody Vegetation - live trees or woody, non-herbaceous shrubs.

Adopted at Annual Town Meeting, August 24, 2010

Effective, September 2, 2010

Janice Scanlon
Town Clerk
Town of Perry
TOWN OF PERRY

SUBDIVISION ORDINANCE

ADOPTED:
# TOWN OF PERRY

## SUBDIVISION ORDINANCE

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THE SUBDIVISION ORDINANCE
OF THE TOWN OF PERRY

I. PURPOSE AND AUTHORITY

A. The purposes of this ordinance are to assure the comfort, convenience, safety, health, and welfare of the people of the Town of Perry, Maine; to protect the environment; to promote the development of an economically sound and stable community; 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; to provide for the expeditious and efficient process for the review of proposed subdivisions; and to comply with Title 30-A, M.R.S.A., § 4403 and §4404.

B. These standards shall be known and may be cited as “The Subdivision Ordinance of the Town of Perry”.

C. The Planning Board of the Town of Perry, hereinafter called the Board, shall have the authority to administer this Ordinance.

D. The Code Enforcement Officer of Perry, hereinafter called the CEO, shall have the authority to enforce this Ordinance.

E. If any portion of a subdivision crosses municipal boundaries, all meetings and hearings to review any new, revised or amended application shall be held jointly by the reviewing authorities from each municipality. The reviewing authorities in each municipality, upon written agreement, may waive the requirement under this subsection for any joint meeting or hearing.

F. Development within a subdivision will additionally be in compliance with the standards set forth in the "Town of Perry, Land Use and Development Ordinance."

II. APPLICABILITY

A. The provisions of this ordinance shall pertain to all land proposed for subdivision as defined in Title 30-A, M.R.S.A. § 4404 and to all mobile/manufactured home parks, condominiums, and apartment buildings or complexes which consist of three (3) or more dwelling units), within the boundaries of the Town of Perry.
B. Any subdivision is a division of a tract or parcel of land into 3 or more lots within any five-year period, which begins after September 23, 1971. The 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 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 (3) or more dwelling units within a five-year period.

C. 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:

1. Both divisions are accomplished by a sub-divider who has retained one of the lots for the sub-divider’s use as a single-family residence or for open space as defined in Title 36 M.R.S.A., §1102 for a period of at least five years before the second division occurs; or

2. The division of the tract or parcel is otherwise exempted under this definition.

D. A lot of forty acres or more shall not be counted as a lot, except where the lot or parcel from which it was divided is located entirely or partially within any shore land area as defined in Title 38 M.R.S.A., § 435, or as defined by the municipality’s shore land zoning ordinance.

E. Exceptions. The following divisions do not create a lot or lots for the purposes of these regulations, unless the intent of the transferor in any transfer or gift is to avoid the objectives of these regulations.

1. A division accomplished by devise; condemnation; or by order of court.
2. A division accomplished by a gift to a person related to the donor. 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 a spouse, parent, grandparent, brother, sister, child or grandchild related by blood, marriage or adoption. A gift under this paragraph can not be given for consideration that is more than 1/2 the assessed value of the real estate.
3. A division accomplished by a gift to a municipality, if that municipality accepts the gift.
4. 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. If real estate exempt under this paragraph is transferred within five (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.
5. The division of a tract or parcel of land into 3 or more lots and upon each of which lots permanent dwelling structures legally existed before September 23,
6. A 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.

7. Proposed subdivisions approved by the Planning Board or municipal officials prior to September 23, 1971, subdivisions in actual existence prior to September 23, 1971, and subdivision plans legally recorded in the proper registry of deeds, prior to September 23, 1971.

8. A subdivision in violation of this subchapter that has been in existence for 20 years or more, except a subdivision:

   a) That has been enjoined pursuant to section X, ENFORCEMENT; PROHIBITED ACTIVITIES;
   b) For which approval was expressly denied by the municipal reviewing authority, and record of the denial was recorded in the appropriate registry of deeds;
   c) For which a lot owner was denied a building permit and record of the denial was recorded in the appropriate registry of deeds; or
   d) That has been the subject of an enforcement action or order, and record of the action or order was recorded in the appropriate registry of deeds.

F. Whenever a subdivision is exempt from Title 38, chapter 3, subchapter I, article 6, per this Subsection, that fact must be expressly noted on the face of the subdivision plan to be recorded in the registry of deeds. The developable land, as defined in Title 38, section 488, subsection 5, must be indicated on the plan. The person submitting the plan for recording shall prepare a sworn certificate in recordable form and record it in the registry of deeds. This certificate must:

(1) Indicate the name of the current property owner;

(2) Identify the property by reference to the last recorded deed in its chain of title and by reference to the subdivision plan;

(3) Indicate that an exemption from Title 38, chapter 3, subchapter I, article 6, has been exercised;

(4) Indicate that the requirements of Title 38, section 488, subsection 5, have been and will be satisfied; and

(5) Indicate the date of notification of the Department of Environmental Protection under Title 38, section 488, subsection 5.

The exemption is not valid until recorded as provided in this paragraph. Recording must occur within 90 days of the final subdivision approval under this subchapter or the exemption is void.
G. 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.

III. ADMINISTRATIVE PROCEDURES

A. 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 Board members and any applicants appearing on the agenda, and posted at the Town Office. Applicants shall request to be placed on the Board’s agenda at least seven days in advance of a regularly scheduled meeting by contacting the Code Enforcement Officer (CEO).

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.

B. Application forms must be accepted as complete by the Board before approval can be issued under this Ordinance. The Board may require additional information or studies at their discretion, should the initial application lack sufficient information necessary to determine that the project meets the criteria in Section IV and the Performance Standards in Section V below. The burden of proof that all criteria and Performance Standards have been met shall remain with the applicant.

C. The applicant shall be responsible for notifying all abutting property owners by return receipt certified mail at least seven (7) days prior to the submission of an application to the Board. An application must be on file at the Town Office for seven (7) days before the Board can accept it as complete.

D. Within thirty (30) days from receipt of an application, the Board shall notify the applicant in writing either that the application is a complete application or, if the application is incomplete, what specific additional material is needed to make a complete application. After the Board has determined that a complete application has been filed, it shall notify the applicant and begin its full evaluation of the proposed project.

E. In the event that the Board determines to hold a public hearing on an application under this ordinance, it shall hold a public hearing within thirty (30) days after determining it has received a completed application, and shall cause notice of the
date, time, and place of such hearing to be given to the person making the
application and to be published in a newspaper of general circulation in the Town at
least two (2) times, the date of the first publication to be at least seven (7) days prior
to the hearing. Costs associated with this notification shall be borne by the applicant.

F. The Board, shall, within thirty (30) days of a public hearing or within sixty (60) days
of receiving a completed application, if no hearing is held, or within such other time
limit as may be otherwise mutually agreed to, issue an order denying or granting
approval of the proposed subdivision or granting approval upon such terms and
conditions as it may deem advisable to satisfy the criteria listed in Section IV, the
Performance Standards listed in Section V, and any other ordinances of the Town of
Perry, and to protect and preserve the health, safety, and general welfare of the public.

IV. PRE-APPLICATION, SKETCH PLAN AND ON-SITE INSPECTION

A. The purpose of the pre-application meeting is for the applicant to present general
information regarding the proposed subdivision to the Board and to receive the
Board’s comments prior to the expenditure of substantial sums of money on the
project. The pre-application meeting, the submittal or review of the sketch plan and
the onsite 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.

B. The applicant shall present the pre-application sketch plan and make a verbal
presentation regarding the site and the proposed subdivision. The pre-application
sketch plan shall show in simple form the proposed layout of streets, lots, buildings,
and other features in relation to the existing conditions. The sketch plan does not have
to be engineered and should be supplemented with general information describing the
existing conditions of the site and the proposed development. A copy of the U.S.G.S.
topographic map of the area and copy of the county soils map for the area to be
developed should also be presented at this time.

C. Within thirty days of the pre-application meeting, the Code Enforcement Officer shall
visit the site (unless there is more than one foot of snow on the ground) and prepare
an inspection report for the Board.

D. Following the pre-application meeting the Code Enforcement Officer shall establish a
file for the proposed subdivision. All correspondence and submissions regarding the
pre-application meeting and application shall be maintained in the file.

V. SUBDIVISION APPLICATION PROCESS

A. Any application for subdivision approval which constitutes a revision or amendment to
a subdivision plan which has been previously approved shall indicate that fact on the
application and shall identify the original subdivision plan being revised or amended. In reviewing such an application, the municipal reviewing authority shall make findings of fact establishing that the proposed revisions do or do not meet the criteria of section 4404.

1. Recording. If a subdivision plat or plan is presented for recording to a register of deeds and that plat or plan is a revision or amendment to an existing plat or plan, the register shall:

   a) Indicate on the index for the original plat or plan that it has been superseded by another plat or plan;

   b) Reference the book and page or cabinet and sheet on which the new plat or plan is recorded; and

   c) Ensure that the book and page or cabinet and sheet on which the original plat or plan is recorded is referenced on the new plat or plan.

PRELIMINARY APPLICATION PROCESS

A. The applicant, or his duly authorized representative, shall submit the preliminary plan to the Code Enforcement Officer. 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 may result in a delay of the Board’s review of the plan until the next meeting that the applicant attends. Within three days of the meeting at which an application for preliminary plan approval of a subdivision is initially presented, the Board, through the CEO, will issue a dated receipt to the applicant.

B. Within thirty days of the receipt of the preliminary 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.

C. If the Board decides to hold a public hearing, it shall hold the hearing within thirty 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 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. 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.

D. Within thirty days from the public hearing or sixty 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. § 4403. 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.

E. 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 the 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.

PRELIMINARY PLAN REQUIREMENTS

A. The application for approval of a subdivision shall include the following information:

1. Proposed name of the subdivision, or identifying title, and the name of the municipality in which it is located, plus assessor’s map and lot numbers.
2. Verification of right, title, and interest to the property.
3. The date the plan was prepared, north point, and graphic map scale.
4. The names and addresses of the record owner, applicant, and individual or company who prepared the plan, and of adjoining property owners.
5. A standard boundary survey of the parcel, giving complete descriptive data by bearings and distances, made by a registered 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.
6. 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 shall also be included.
7. A copy of any proposed deed restrictions intended to cover all or part of the lots or dwellings in the subdivision.
8. An indication of the type of sewage disposal to be used in the subdivision:
   a. When sewage disposal is to be accomplished by subsurface wastewater disposal systems, an HHE-200 form of septic system design shall be submitted along with a map showing the location of all test pits dug on the site.
9. 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 servicing water district shall be submitted indicating there is adequate supply and pressure for the subdivision.
10. 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 location and size of existing and proposed sewers, water mains, culverts, and drainage ways on or adjacent to the property to be subdivided.

15. The width and location of any existing streets, highways, easements, building lines, parks and other open spaces on, adjacent to, or within the subdivision.

16. The location of any open space to be preserved and a description of proposed improvements and its management.

17. Any parcels of land proposed to be dedicated to public use and the conditions of such dedication.

18. The 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.

19. If any portion of the subdivision is in a flood-prone area, the boundaries of any Special Flood Hazard Area, and the 100-year flood elevation, (if published) as depicted on the Federal Flood Insurance Rate Map (FIRM), shall be delineated on the plan.

20. A hydrogeologic assessment prepared by a certified geologist or Registered Professional Engineer, experienced in hydrogeology, when the subdivision is not served by a public sewer and:
   a. any part of the subdivision is located over sand and gravel aquifers, as shown on a map entitled “Hydrogeologic Data for Significant Sand and Gravel Aquifers” by Maine Geological Survey, 1985 (File No. 98-138, 144, and 147); 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 groundwater quality.


22. A storm water management plan, prepared by a professional engineer is required. The Board may not waive submission of a storm water management plan unless the subdivision is not in the watershed of a great pond, the proposed subdivision will not involve grading which changes the drainage patterns, and the addition of impervious surfaces such as roofs and driveways is less than 5% of the area of the subdivision.

23. 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. If any portion of the subdivision is located within an area designated as a critical natural area by the Maine Natural Areas program the plan shall indicate
appropriate measures for the preservation of the values that qualify the site for such designation.
24. A plan for the location and dimensions of vegetative buffer strips.
25. 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.
26. The location and method of disposal for land clearing and construction debris.
27. A letter from the Fire Chief indicating their review of the plan and their approval of the development.
28. The checklist of the above listed application materials will be submitted as a cover page of the application.
29. The Planning Board may require any additional information not listed above, when it is determined necessary by the Board to determine whether the statutory review criteria of Title 30-A M.R.S.A. §4404 have been met.

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.

FINAL APPLICATION PROCESS

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.

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 CEO or delivered by hand to the municipal offices. Upon receipt of an application for plan approval of a subdivision, the CEO will issue a dated receipt to the applicant. 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. The final plan shall be in substantial conformance with the layout shown on the preliminary plan, plus any changes required by the Board.
B. The applicant, or the applicant's representative, shall attend the meeting of the Board to present the final plan application. Failure to attend the meeting to present the preliminary plan application may result in a delay of the Board's review of the plan until the next meeting that the applicant attends.

C. Within thirty 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.

D. A non-refundable application fee of $25 per lot or dwelling unit shall accompany all applications for final approval for a subdivision. In addition, the applicant shall pay a fee of $50 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 to review the application if necessary. Any balance in the account remaining after a decision on the final plan application by the Board shall be returned to the applicant.

E. If the Board decides to hold a public hearing, it shall hold the hearing within thirty (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 general circulation in the municipality at least two (2) times, the date of the first publication to be at least seven (7) days prior to the hearing. A copy of the notice shall be mailed to the applicant. If the Board deems a public hearing necessary, all costs incurred in advertising and notifying abutters of a public hearing shall be borne by the applicant.

F. Within thirty (30) days from the public hearing or sixty (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.

G. If the preliminary plan identified any areas on or eligible to be listed on the National Register of Historic Places, 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.

H. In any subdivision where multi-user (in common) systems such as, but not limited to: wells and septic and disposal systems, storm water control, erosion control, or buffers, and where roads are being proposed, the developer shall vest ownership of each of these areas individually or collectively in a legal entity established under Maine law. Said entity shall consist of the same number of ownership shares as the proposed number of lots or units that are being created by the subdivision and initial ownership will be held by the developer. Prior to obtaining Final approval from the Planning Board, the developer must show evidence that this entity has been created according to the provisions specified. As each lot or unit is conveyed, the developer must transfer one share of ownership per lot or unit along with the title to the lot or unit. All deeds must make reference to ownership in this entity. At such time any road within a subdivision is accepted by the town, all costs associated with future maintenance and repair of said road shall be the responsibility of the Town. No other areas of common ownership can be transferred or assumed by the Town.
I. 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 review of the plan until the next meeting which the applicant attends.

J. Within thirty 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.

K. Upon determination that a complete application has been submitted for review, the Board shall determine whether to hold a public hearing on the final plan application.

L. If the Board decides to hold a public hearing, it shall hold the hearing within thirty 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 least three prominent places within the municipality at least seven days prior to the hearing.

M. The Board shall notify the road commissioner, town manager, 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 departments’ existing capital facilities to service the proposed subdivision.

N. Within thirty days from the public hearing or within sixty 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 of the criteria of the statute and the standards of these regulations have been met, they shall approve the 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 required standards will be met. The reasons for any conditions shall be stated in the records of the Board.

FINAL PLAN REQUIREMENTS

A. The final plan for a subdivision 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 one hundred acres may be drawn at a scale of not more than two hundred feet to the inch provided all necessary detail can be easily read. Subdivision plans shall be no larger than 24 by 36 inches in size, and shall have a margin of two inches outside of the borderline on the left side for binding and a one-inch margin outside the border along the remaining sides.
B. In addition to the listed required materials above, one paper copy of the final plan, reduced in size to 8 ½ by 11 inches or 11 by 17 inches, and all accompanying information, shall be mailed to each Board member no less than seven days prior to the meeting.

C. After approval of the final plan, two reproducible, stable-based transparencies shall be submitted, one to be recorded at the Registry of Deeds, the other to be filed at the municipal office.

D. The application for approval of any subdivision shall include the following information:

1. Proposed name of the subdivision, or identifying title, and the name of the municipality in which it is located, plus assessor’s map and lot numbers.
2. Verification of right, title, and interest to the property.
3. The date the plan was prepared, north point, and graphic map scale.
4. The names and addresses of the record owner, applicant, and individual or company who prepared the plan, and of adjoining property owners.
5. A standard boundary survey of the parcel, giving complete descriptive data by bearings and distances, made by a registered 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.
6. A copy of the most recently recorded deed for the parcel.
7. A copy of all deed restrictions, easements, rights-of-way, or other encumbrances currently affecting the property shall also be included. The location of any boundaries affecting the subdivision.
8. A copy of any proposed deed restrictions or easements intended to cover all or part of the lots or dwellings in the subdivision.
9. The numbers of acres within the subdivision, location of property lines, existing buildings, watercourses, and other essential existing physical features.
10. 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.
11. Contour lines at the interval specified by the Board, showing elevations in relation to mean sea level.
12. An indication of the type of sewage disposal to be used in the subdivision:
   a. When sewage disposal is to be accomplished by subsurface wastewater disposal systems, an HHE-200 form of septic system design shall be submitted along with a map showing the location of all test pits dug on the site.
   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 hydro geologist familiar with the area.
   c. A written statement from the fire chief approving all hydrant locations or other fire protection measures deemed necessary.
13. An indication of the type of water supply system(s) to be used in the subdivision.
   a. When water is to be supplied by an existing public water supply, a written statement from the servicing water district shall be submitted indicating the
district 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.

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 hydro geologist familiar with the area.

c. A written statement from the fire chief approving all hydrant locations or other fire protection measures deemed necessary.

14. Wetland areas shall be identified on the survey, regardless of size.

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 width and location of any existing streets, highways, easements, buildings, parks and other open spaces on, adjacent to, or within 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 registered land surveyor. The reproducible plan shall be embossed with the seal of the registered land surveyor and be signed by that individual.

17. Street plans meeting the requirement of Title 30-A M.R.S.A. Section 10.15.

18. The location of any open space to be preserved and a description of proposed improvements and its management.

19. Any 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 document showing the manner in which open spaces to be retained by the developer or lot owners are to be maintained are to 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.

20. A list of improvements, 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.

21. A list of improvements and maintenance thereof, with both capital and annual operating cost estimates, which must be financed by the municipality, or quasi-municipal districts. The applicant shall provide an estimate of the net increase in taxable assessed valuation at the completion of the construction of the subdivision. These list shall include but not be limited to:

   a. Schools, including busing
   b. Street maintenance and snow removal
   c. Police and fire protection
   d. Solid waste disposal
   e. Recreational facilities
   f. Storm water drainage
   g. Waste water treatment
   h. Water supply

22. The location and method of disposal for land clearing and construction debris.
23. A letter from (each) the Fire Chief and Selectmen indicating their review of the plan.
24. Evidence of adequate financial capability to construct the project shall be provided in the form of a letter(s) from a certified financial institution(s) and/or a letter of credit. The board will allow alternative forms of evidence to be added to the application should particular circumstances warrant the substation.
25. The 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.
26. The boundaries of any flood hazard areas and the 100-year flood elevation as depicted on the municipality’s flood maps shall be delineated on the plan.
27. A hydrogeologic assessment prepared by a certified geologist or Registered Professional Engineer, experienced in hydrogeology, when the subdivision is not served by a public sewer and:
   a. Any part of the subdivision is located over sand and gravel aquifers, as shown on a map entitled “Hydro geologic Data for Significant Sand and Gravel Aquifers” by Maine Geological Survey, 1985 (File No. 98-138, 144, and 147), OR
   b. The subdivision has an average density of more than one dwelling unit per 100,000 square feet.
   c. The Board may require a hydrogeologic assessment in other cases where site considerations or development design indicate greater potential of adverse impacts on groundwater quality.
28. 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. If any portion of the subdivision is located within an area designated as a critical natural area by the Maine Natural Areas program the plan shall indicate appropriate measures for the preservation of the values that qualify the site for such designation.
29. A plan for the location and dimensions of vegetative buffer strips.
30. 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.
31. The location and method of disposal for land clearing and construction debris.
32. A letter from the Fire Chief indicating their review of the plan and their approval of the development.
33. The checklist of the above listed application materials will be submitted as a cover page of the application.
34. The Planning Board may require any additional information not listed above, when it is determined necessary by the Board to determine whether the statutory review criteria of Title 30-A M.R.S.A. §4404 have been met.

E. The final plan shall also include or be accompanied by the following information, unless a waiver is requested and granted pursuant to Article 12, Waivers:

1. An erosion and sedimentation control plan prepared in accordance with the *Maine Erosion and Sediment Control Handbook for Construction, Best Management Practices*, (Maine Department of Environmental Protection and the Cumberland County Soil and Water Conservation District, 1991). The Board may waive
submission of the erosion and sedimentation control plan only if the subdivision is not in the watershed of a great pond, and upon a finding that the proposed subdivision will not involve road construction or grading which changes drainage patterns and if the addition of impervious surfaces such as roofs and driveways is less than 5% of the area of the subdivision.

2. A stormwater management plan, prepared by a registered professional engineer in accordance with the most recent edition of Stormwater Management for Maine: BMPS Technical Design Manual, published by the Maine Department of Environmental Protection, 2006. Another methodology may be used if the applicant can demonstrate it is equally applicable to the site. The Board may waive submission of the stormwater management plan only if the subdivision is not in the watershed of a great pond, and upon a finding that the proposed subdivision will not involve road construction or grading which changes drainage patterns and if the addition of impervious surfaces such as roofs and driveways is less than 5% of the area of the subdivision.


4. 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 phosphorous control, the following shall be submitted or indicated on the plan:
   a. A phosphorous impact analysis and control plan using procedures set forth in Phosphorous Control in Lake Watersheds: A Technical Guide for Evaluating New Development, published by the Maine Department of Environmental Protection, revised September, 1992. The analysis and control plan shall include all worksheets, engineering calculations, a construction specifications and diagrams for control measures, as required by the Technical Guide.
   b. A long-term maintenance plan for all phosphorous control measures.
   c. The contour lines shown on the plan shall be at an interval of no less than five feet.
   d. Areas with sustained slopes greater than 25% covering more than one acre shall be delineated.

VI. FINAL APPROVAL AND FILING

A. Upon findings of fact and determination that all standards on 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 finding of fact and
reasons for any conditions or denials. One copy of the signed plan shall be forwarded to the code enforcement officer. Any subdivision not recorded in the Registry of Deeds within ninety days of the date upon which the plan is approved and signed by the Board shall become null and void. The applicant shall notify the code enforcement officer when the plan was filed at the Registry.

B. At the time the Board grants final plan approval, it may permit the plan to be implemented in two or more phases subject to any conditions the Board deems necessary in order to ensure the orderly development of the plan. This incremental permitting will allow for orderly planning, financing and provision of public services that might be impacted by the subdivision. If the superintendent of schools indicates that there is less than 20% excess classroom capacity existing in the school, the Board shall require the plan to be divided into sections to prevent classroom overcrowding.

C. 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. 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 its 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 and the cost associated with such will be the responsibility of the applicant.

D. The approval of 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 recreational 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.

E. Except in the case of a phased development plan, failure to complete substantial construction of the subdivision within five years of the date of approval and signing of the plan shall render the plan null and void. Upon determining that a subdivision’s approval has expired under this paragraph, the Board shall have a notice placed in the Registry of Deeds to that effect.

VII. PERFORMANCE STANDARDS
The performance standards are intended to clarify and expand upon the criteria for approval and are to be met by the developer.

When applicable the Board shall require road construction and drainage standards to be met. These standards are as provided for in the Land Use Ordinance as adopted by the Town of Perry, and are hereby incorporated as part of this ordinance.

A. Pollution:

The proposed subdivision shall not discharge wastewater to a water body without a license from the Maine Department of Environmental protection.

B. Sufficient Water

1. Water Supply

   a. Any subdivision within the area designated for future public water supply service shall make provisions for connection to the public system. When public water supply service will not be available at the time of construction of the subdivision, a “capped system” shall be installed within the subdivision to allow future connection when service becomes available without excavation within the right-of-way of any street within the subdivision.

   b. When a subdivision is to be served by a public water system, the complete supply system within the subdivision, including 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 servicing water company or district and the fire chief.

   c. 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.

      1. Individual wells shall be sited and constructed to prevent infiltration of surface water, and contamination from subsurface wastewater disposal systems and other sources of potential contamination.

      2. Lot design shall permit placement of wells, subsurface wastewater disposal areas, and reserve sites for subsurface wastewater disposal areas in compliance with the Maine Subsurface Wastewater Disposal Rules and the Well Drillers and Pump Installers Rules.
3. If the applicant provides a central water supply, the location and protection of the water source and the design, construction and operation of the system shall conform to the standards of the Maine Rules Relating to Drinking Water.

2. 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.

C. Impact on Existing Water Supplies

In meeting the standards, a proposed subdivision shall not generate a demand on the source, treatment facilities or distribution system of the servicing water company or district beyond the capacity of those system components, considering the 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 district or company’s system as necessary to alleviate existing deficiencies.

D. Soil Erosion

1. The proposed subdivision shall prevent soil erosion from entering water bodies, wetlands, and adjacent properties.

2. The procedures outlined in the erosion and sedimentation control plan shall be implemented during the site preparation, construction, and cleanup stages.

3. 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.

E. 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:

1. 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.
2. Access ways to non-residential subdivisions or to multifamily developments 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 lane shall be done.
3. 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. Back lots shall be accessed via internal roadways.
4. Streets that 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 Board. No street names shall be the common name of a given person. The developer shall either install the street name sign and traffic safety and control signs meeting municipal specifications, or shall reimburse the municipality for the costs of their installation. Street lighting shall be installed as approved by the Board.
5. Following street construction, the developer or contractor shall conduct a thorough cleanup 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, limes, fertilized, and seeded.
F. Sewage Disposal

A. Public System

1. When a subdivision is to be served by the public sewage system, the complete collection system within the subdivision, including manholes and pump stations, shall be installed at the expense of the applicant.

2. The Sewer District shall certify that providing service to the proposed subdivision is within the capacity of the public sewage system’s collection and treatment system or improvements planned to be complete prior to the construction of the subdivision.

3. The 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 servicing sewer district or department.

B. Private Systems

1. When a proposed subdivision is not within the area for public sewage disposal, such disposal shall be private subsurface wastewater disposal or a private treatment facility with 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 meeting the requirements for a new system represent an area large enough for a disposal area on soils meeting the Disposal Rules.
   b. On lots in which the limiting factor has been identified as being within 15 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 from being built upon.
   c. In no instance shall a disposal area be on a site that requires a New System Variance from the Subsurface Wastewater Disposal Rules.

G. Solid Waste

1. If the additional solid waste from the proposed subdivision exceeds the capacity of the municipal solid waste facility, causes the municipal facility to no longer be in compliance with its license from the Department of Environmental Protection, or causes the municipality to exceed its contract
with a non-municipal facility, the applicant shall make alternate arrangements for the disposal of solid waste. The alternate arrangements shall be at a disposal facility that is in compliance with its license. The Board may not require the alternate arrangement to exceed a period of five years.

2. A letter from the transfer station manager shall be submitted referencing the ability of the facility to absorb the additional materials.

H. Impact on Natural Beauty Aesthetics, Historic Sites, Wildlife Habitat, Rare Natural Areas or Public Access to the Shoreline

1. Preservation of Natural Beauty and Aesthetics: The Board may require the application to include a landscape plan that will show the preservation of any existing trees larger than 24 inches measured at four feet about the ground, the replacement of trees and vegetation, and graded contours.

2. Retention of Open Spaces and Natural Historic Features
   a. If any portion of the subdivision is located within an area designated as Resource Protection by the Town of Perry's Shoreland Zoning map, 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.
   b. If any portion of the subdivision is designated a site of historic or prehistoric preservation by the Maine Preservation Commission, appropriate measures for the protection of historic or prehistoric resources shall be included in the plan.

3. Protection of Significant Wildlife Habitat
   a. The applicant shall demonstrate that there shall be no adverse impacts on the habitat and species said habitat supports.

   A report prepared by a wildlife biologist certified by the Wildlife Society demonstrated experience with the wildlife resource being impacted shall be submitted if any portion of the proposed subdivision lies within 250 feet of the following areas identified and mapped by the Department of Inland Fisheries and Wildlife as:
   1. Habitat for species appearing on the official state or federal lists
of endangered or threatened species; or
2. High and moderate value waterfowl and wading bird habitats, including nesting and feeding areas.

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.

b. Existing public rights of access to the shoreline of a water body shall be maintained by means of easements or rights of way, or shall be included in the open space with provisions made for continued public access.

I. Financial and Technical Capacity

1. 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 of financial capacity the Board shall consider the proposed time frame for construction and the effects of inflation, evidence of financial institutions, corporation papers from other investors in the project and references from past projects completed successfully.

2. Technical Ability

a. The applicant shall retain qualified contractors and consultants to supervise, construct, and inspect the required improvements in the proposed subdivision.
b. 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. Documentation of abilities may consist of letters of reference from past projects and/or professional certifications.

J. Impact on Ground Water Quality or Quantity

When a hydro geologic 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 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.
f. A map showing the location of any subsurface water disposal systems and drinking water wells within the subdivision and within 200 feet of the subdivision boundaries.
g. If ground water contains contaminants in excess of the primary standards, and the subdivision is to be served by onsite ground water supplies, the applicant shall demonstrate how water quality will be improved or treated.

2. Ground Water Quantity

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 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.

K. Flood Plain 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, electrical, and water systems, shall be located and constructed to minimize or eliminate flood damage.
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 sales agreement, or document transferring or expressing any 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.

L. Identification of Freshwater Wetlands

Freshwater wetlands shall be identified in accordance with the 1987 *Corps of Wetlands Delineation Manual*, published by the United States Army Corps of Engineers and subsequent revisions.

M. Storm Water Management

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, under drains, storm drains, and best management practices equivalent to those described in *Storm water Management for Maine: Best Management Practices*, published by the Maine Department of Environmental Protection, 1995, and any subsequent revisions. The storm Water management system shall be designed to meet the following standards.

- Quantity: Peak discharge rates shall be limited to the predevelopment levels for the 2-year, 10-year, and 25-year frequency, 24-hour duration storm.

- Quality: Storm water run-off in a subdivisions must be treated by the use of best management practices equivalent to those described in *Storm water Management for Maine: Best Management Practices*, published by the Maine Department of Environmental Protection, 1995, and any subsequent revisions, to achieve, by design, a 40% reduction in total suspended solids.

- 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. Whenever 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.

N. Spaghetti-lots prohibited

If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond or coastal wetland as these features are defined in Title 38, section 480-B,
none of the lots created within the subdivision have a lot depth to shore frontage ratio
greater than 5 to 1.

O. Impact on adjoining municipality
For any proposed subdivision that crosses municipal boundaries, the proposed
subdivision will not cause unreasonable traffic congestion or unsafe conditions with
respect to the use of existing public ways in an adjoining municipality in which part of
the subdivision is located.

P. Lands subject to liquidation harvesting. Timber on the parcel being subdivided has
not been harvested in violation of rules adopted pursuant to Title 12, section 8869,
subsection 14. If a violation of rules adopted by the Maine Forest Service to substantially
eliminate liquidation harvesting has occurred, the municipal reviewing authority must
determine prior to granting approval for the subdivision that 5 years have elapsed from the
date the landowner under whose ownership the harvest occurred acquired the parcel.

VIII. PERFORMANCE GUARANTEES

Requiring and enforcing performance guarantees is the best insurance a municipality can
have that a developer will do what is promised in the land use approval process. A
guarantee shall be instituted when a project consists of more than six lots and the
construction of an interior private or public road.

A. Types of Guarantees. With submittal of the application for plan approval, the
sub-divider 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 rates for construction costs.

1. An offer of conditional approval limiting the number of units built or lots sold
   until all required improvements have been constructed; or

2. A performance bond payable to the Town issued by a surety company,
   approved by the Municipal Officers; or

3. An irrevocable letter of credit from a financial institution establishing
   adequate funding for the construction of the subdivision, from which the
   Town may draw if construction is inadequate, approved by the Municipal
   Officers.

The conditions and amount of the Performance Guarantee shall be determined by the
Board with the advice of the road commissioner, municipal officers, town attorney,
and/or an engineer employed by the Town to review the proposed development.
B. **Contents of the Guarantee.** The Performance Guarantee shall contain a construction schedule, costs estimates for each major phase of construction (taking inflation into account), provisions for inspections of each phase of construction, provisions for the release of part or all of the Performance Guarantee to the developer, and a date after which the developer will be in default and the Town shall have access to the funds to finish construction.

C. **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 Road Commissioner and/or an engineer employed by the town and whatever other agencies and departments may be involved, that the proposed improvements meet or exceed the design and construction requirements for that portion of the improvements for which the release is requested.

D. **Default.** If, upon inspection, the CEO and/or selectmen finds that any of the required improvements have not been constructed in accordance with the plans and specifications filed as part of the application, they shall so report in writing to the municipal officers, the Planning Board and the subdivider or builder. The municipality’s officers shall take any steps necessary to preserve the municipality’s rights.

E. **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, and erosion and sedimentation control measures.

F. **Phasing of Development.** The Board may approve plans to develop a 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 that 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.

G. **Conditional Agreement.** The Board at its discretion may provide for the applicant to enter into a binding agreement with the municipality in lieu of the other financial performance guarantees. Such an agreement shall provide for approval of the final plan on the condition that no more than four lots may be sold or built upon until either:

1. It is certified by the Board, or its agent, that all of the required improvements have been installed in accordance with these regulations and the regulations of the appropriate utilities; or
2. A performance guarantee, acceptable to the municipality, is submitted in
an amount necessary to cover the completion of the required improvements at an amount adjusted for inflation and pro-rated for the portions of the required improvements already installed.

IX. APPEALS

An aggrieved party may appeal any decision of the board under this ordinance to the Superior Court within thirty (30) days from the date of written notice of the decision.

X. ENFORCEMENT; PROHIBITED ACTIVITIES

A. No person, firm, corporation or other legal entity may sell or offer to sell, lease, develop, build upon, gift, or convey for consideration, any project to which this ordinance applies before acquiring the approval of the Planning Board. Failure to comply with the provisions of this ordinance or conditions or terms of approval shall be punishable by a fine of not more than one thousand dollars ($1000) for each transaction.

XI. FEES

Each application shall be accompanied by a fee of two hundred fifty dollars ($250) plus ten dollars ($10) per dwelling unit or lot.

A non-refundable application fee per lot or dwelling unit, to be set by the selectmen, shall accompany all applications for final approval for a subdivision.

XII. AMENDMENTS

A. These regulations may be amended by:
   1. The Legislative Body of the Town of Perry
   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.

XIII. DEFINITIONS
In general, words and terms in these regulations shall have their customary dictionary meanings.

**Applicant:** The person applying for subdivision approval under these regulations.

**Arterial Street:** A major thoroughfare that serves as a major traffic way for travel between and through a municipality.

**Average Daily Traffic (ADT):** 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 (CIP):** The municipality’s proposed schedule of future projects listed in order of construction priority together with the 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 general public. It may include complementary structures and improvements, typically used for maintenance and operation of the open space, such as for outdoor recreation.

**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 of 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.

**Complete Substantial Construction:** The completion of a portion of the improvements that represents no less than thirty percent of the costs of the proposed improvements within a subdivision including siding on the buildings. 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 the building construction shall be included in the total costs of proposed improvements.

**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 that 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 on the Shoreland Zoning Map as revised November 5, 1991. 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 cannot 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.

**Driveway**: A vehicular access way serving two dwelling units or less.

**Dwelling Unit**: A room or suite of rooms used as a habitation which is separate from other such rooms or suites of rooms, and which contains independent living, cooking, and sleeping facilities; includes single family houses, and the units in a duplex, apartment house, multifamily dwellings, and residential condominiums.

**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 BOD\(_5\) (five-day biochemical oxygen demand) and total suspended solids concentrations than domestic water. [Any engineered system must be reviewed and approved by the Department of Human Services’ Plumbing and Waste Water Disposal Program prior to the issuance of a permit by the local plumbing inspector.]

**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.

**Great Pond**: Any inland body of water which in a natural state has a surface area in excess of ten acres and any inland body of water artificially formed or increased which has a surface area in excess of thirty acres, except for purposes of these regulations, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner.

**High Intensity Soil Survey**: A map prepared by a Certified Soil Scientist, identifying the soil types down to 1/8 acre or less at a scale equivalent to the subdivision plan submitted. The soils shall be identified in accordance with the Soil Survey of Kennebec County Maine (published by 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 waster water disposal systems shall not be considered to constitute high intensity soil surveys.

**100-Year Flood**: The highest level of flood that, on the average, has a one percent chance of occurring in any given year.
**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-watermark is the upland edge of the wetland, and not the edge of the open water.

**Multifamily Development:** A subdivision that contains three or more dwelling units on land in common ownership, such as apartment buildings, condominiums or mobile home parks.

**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 in the proposed subdivision plan, minus the area for streets or access and the areas that are unsuitable for development as referenced.

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

**New Structures 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.

**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 Improvements:** The term shall include all roads, fire protection structures and ponds; any structure or land proposed to be dedicated to the Town; any land or structure which is offered an easement to the Town; and, all storm water drainage structures that are designed to allow water to flow outside the property or the subdivision.

**Recording Plan:** The 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 such a plan such as sewer and water line locations and sizes, culverts, and building lines.
**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 ordinances 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.

**Street:** Public and private ways such as alleys, avenues, highways, roads, and other right-of-way, as well as areas on subdivision plans designated as rights-of-way for vehicular access other than driveways.

**Subdivision:** the division of a tract or parcel of land into 3 or more lots within any five-year period, that begins after September 23, 1971. The 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 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.

**Tract of 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 the land on both sides thereof.

**Usable Open Space:** That portion of common open space that 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 ten percent (10%).

**Vernal pools:** are temporary pools of water that provide habitat for distinctive plants and animals. They are considered to be a distinctive type of wetland usually devoid of fish, and thus allow the safe development of natal amphibian and insect species unable to withstand competition or predation by fish.

**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, river, stream, or brook. Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the above criteria. This is also meant to include forested wetlands.