

2018

## Town of Dixmont Maine Ordinances

Dixmont, Me.

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# Town of Dixmont Building Code Ordinance

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March 21, 2009

Officially amended March 17, 2018

## Section 1. Title and Authority

This ordinance, the Building Ordinance for the Town of Dixmont, herein referred to as the Ordinance, is adopted pursuant to the Town's homerule authority found in the Maine Constitution Art. 8, Pt. 2, Sec. 1 and 30-A MRSA Sec. 3001.

## Section 2. Applicability

This Ordinance establishes a permitting procedure for the construction, placement, relocation, enlargement and replacement of all buildings and accessory structures in Dixmont; establishes various standards which will control the construction, placement, relocation, enlargement and replacement of such buildings and accessory structures; establishes a procedure and standards for the granting of building permits for any building in Dixmont, and prescribes permitting procedures and penalties for violations of the standards contained here.

## Section 3. Conflict with Other Ordinances

- A. The Building Code Ordinance of the Town of Dixmont which was adopted in March 1976 and amended in March of 1989, is hereby repealed and replaced with this Ordinance.
- B. When any provisions of this Ordinance conflict with the provisions of any other local ordinance or state or federal law, the stricter provisions shall apply.

## Section 4. Definitions

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

Back lot. A "back lot" is any parcel of land which has no frontage on a public or private road.

Building. A "building" is any structure and its attachments including but not limited to decks, breezeways, and porches for the housing or enclosure of persons, animals, or personal property. For the purposes of this Ordinance, the term "building" shall mean either residential or commercial buildings, as defined.

Commercial Building. A "commercial building" is a structure which is designed, equipped or intended to be used, or is in fact being used, principally for the buying, selling, manufacture or storage of goods, the provision of services or the provision of facilities for a fee. For the purposes of this Ordinance, the term "commercial building" shall also include any "place of

public accommodation,” as defined in 5 MRSA #4553(8), which includes any establishment which in fact caters to, or offers its goods, facilities or services to, or solicits or accepts patronage from the general public, including without limitation schools, governmental buildings, or community service facilities.

Construction or Constructed. The terms “construction” or “constructed,” as used in this ordinance, shall refer to and be construed to include the construction, placement, relocation, enlargement or replacement of any building or accessory building in Dixmont.

Dwelling Unit. A “dwelling unit” is a room or suite of rooms designed and equipped exclusively for use by one family as a habitation.

Enlargement. “Enlargement” shall mean a building expansion which increases overall floor area of a building or structure by 100 square feet or more.

Frontage. Land bordering a public or private road.

Lot. “A “lot” is an area of land in one ownership or one leasehold, with ascertainable boundaries established by deed or other instrument of record, or a segment of land ownership defined by lot boundary line of a subdivision plan duly approved and recorded in the Penobscot County Registry of Deeds.

Mobile Home. A ‘mobile home’ is a manufactured home transportable in one or more sections which are built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation when connected to the required utilities, including the plumbing, heating, air-conditioning or electrical systems contained therein. All mobile homes are subject to “Town of Dixmont Safety Standards for Manufactured Housing/Mobile Homes” adopted March 19, 1994.

Non-conforming Lot of Record. A “non-conforming lot of record” is a lot upon which the construction of a building would not be permitted by virtue of the dimensional requirements of the Ordinance, but which was lawfully created prior to the effective date of the Ordinance pursuant to the dimensional requirements of the Dixmont Building Code or state minimum lot size, if any, which was effective at the time the lot was created.

Principle Structure. A “principle structure” is a building other than the one which is used for the purposes wholly incidental or accessory to the use of another building or use on the same premises.

Private Road. A “private road” is any road which is not a public road and which, at a minimum, is built according to the design specifications for a public road, private or subdivision road or driveway to a back lot, as those specifications are found in the Town of Dixmont Subdivision Ordinance.

Public Road. A “public road” is any road, town way or state highway which is either maintained by the town or state, owned in fee simple by the town or state, or over which the public has the uninhibited right to travel by virtue of a public easement.

Residential building. A “residential building” is a structure designed, equipped or intended for use, or which in fact being used, as a permanent, seasonal, or temporary living quarters for one or more households.

Structure. A “structure” is 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. The term includes structures temporarily or permanently located, such as decks and satellite dishes.

Substantial Construction. “Substantial construction” shall mean either the first placement or permanent construction of a structure on a site, including but not limited to the pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a mobile or manufactured home on a foundation, slab or pad. Substantial construction does not mean land preparation, such as clearing, grading, or filling.

## **Section 5. Administration**

This Ordinance shall be administered and enforced by the Dixmont Code Enforcement Officer. The Code Enforcement Officer shall, as necessary, inspect any building in the town for the purpose of enforcing the provisions of this Ordinance and any other local or state laws governing the construction of buildings and accessory structures.

## **Section 6. Application for a Permit**

- A. Before the construction of any building, accessory structure, enlargement of buildings, or accessory structures, or siting of a mobile home shall begin, the owner or authorized agent for the owner shall submit to the Code Enforcement Officer an application for a permit for such proposed work and the appropriate application fee in accordance with Section 7 of the Ordinance. The application form shall be supplied by the Code Enforcement Officer.
- B. No application for a permit for any building for which a subsurface wastewater disposal system is required pursuant to 30-A MRSA #4125 and the State of Maine Subsurface Wastewater Disposal Rules shall be considered complete until the application includes a Maine Department of Human Services Bureau of Health Engineering site evaluation form (HHE-200) which has been completed by a licensed site evaluator and which evidences adequate soil conditions for subsurface wastewater disposal.
- C. The Code Enforcement Officer shall review all completed applications for compliance with the standards contained in this Ordinance., Within 15 days of receipt of the completed application, the Code Enforcement Officer shall either return the approved permit to the applicant or transmit to the applicant written notice of denial. The notice of denial shall cite the specific respects in which the applicant’s proposal does not comply

with state law or regulation or the standards of the Ordinance or other Dixmont ordinances. The party aggrieved by the denial of a permit may appeal that decision to the Dixmont Board of Appeals within 30 days in accordance with Section 12 of this Ordinance.

## Section 7. Fees

- A. Non-returnable permit application fees must accompany the application for building or structure proposals according to the following schedule:

Single Family Residential Buildings, up to 1000 sq. ft. ....	\$ 100.00
Single Family Residential Buildings, from 1001 to 2000 sq. ft. ....	\$ 150.00
Single Family Residential Buildings, over 2000 sq. ft. ....	10-cents/sq. ft.
Multi Family Buildings.....	\$ 100/unit
Commercial Buildings .....	\$ 150.00
Accessory Structures, 200 sq. ft. to 1000 sq. ft. ....	\$ 25.00
Accessory Structures, over 1000 sq. ft. ....	\$ 50.00
Mobile Homes .....	\$ 75.00
Enlargement of Buildings or Accessory Structures .....	10-cents/sq. ft.

Accessory Structures (including Agricultural Buildings) under 80 sq. ft. are not subject to this ordinance. Those 80 – 199 sq. ft. require a no-cost permit.

- B. After-the-fact permits. An application for an after-the-fact permit must be accompanied or preceded by payment in full of an amount equal to twice the fee set forth in Section 7 for a timely permit for the same proposal or project, plus any enforcement costs, as determined by the Code Enforcement Officer. An after-the-fact permit is any permit issued by the code Enforcement Officer in response to an application submitted after substantial construction of the building has occurred without the required permit. This section shall not be construed as in any way limiting Dixmont from enforcing the provisions of this Ordinance by means of the procedures and remedies found in Section 11, Enforcement and Penalties.

## Section 8. Standards of Application Review

No building permit shall be issued by the Code Enforcement Officer unless the application proposal is determined by the Code Enforcement Officer to comply with all applicable state law and regulation, local ordinances, and each of the following standards:

- A. Setback. No building, mobile home, or accessory structure shall be constructed closer than twenty (20) feet from any boundary line. All buildings and accessory structures shall have a setback of at least forty-five (45) feet from the centerline of the traveled part of the road right of way (ROW) on all roads having a 49.5 foot ROW excepting that on Town

roads with a sixty six (66) foot ROW the setback distance for buildings and accessory structures shall be at least fifty five (55) feet from the centerline of the traveled part of the ROW. ROW widths to be determined from the latest version of MDOT inventory of Public Roads.

- B. Minimum Lot Size. A building may not be constructed on a lot of less than two (2) acres, except a permit may be issued for construction on a non-conforming lot of record in accordance with Section 9 of this Ordinance.
- C. Road Frontage. Except as provided in Section 8(D), all building shall be constructed on a lot or parcel of land with a public or private road frontage of at least two hundred (200) contiguous feet.
- D. Back Lots. the establishment of an/or construction or building on so-called back lots is authorized, provided such lots are provided with legal rights-of-way to a public road, of not less than fifty (50) feet in width and further, that such rights-of-way do not reduce the road frontage or area requirement of an already existing lot fronting on a road to below the minimum required size and road frontage. Back lots so established must be generally rectangular, having no side of less than two hundred (200) feet and contain a minimum of 87,120 square feet within their boundaries and have no more than a 4-to-1 ratio of depth to frontage.
- E. Multiple Dwelling Units on a Single Lot. If more than one dwelling unit is constructed on a single lot or parcel, the parcel shall contain at least two (2) acres and two hundred (200) feet of frontage on a public or private road for each dwelling unit or conform to requirements of Sec. 8D.

### **Section 9. Non-conforming Lots, Merger of Non-conforming Lots, Retroactive Effect**

- A. Non-conforming Lots. A building permit may be issued, without the need for a variance, for the construction of a building or accessory building or mobile home on a non-conforming lot of record provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot size and frontage can be met. Variances relating to setback or other requirements not involving lot size or frontage shall be obtained by action of the Board of Appeals.
- B. Merger of Non-conforming Lots. 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 or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure, no permit may be issued until the lots are combined to the extent necessary or maximum extent possible to meet the dimensional requirements of this Ordinance.
- C. No Retroactive Effect. This ordinance shall not apply to family dwellings which existed or were under construction when this ordinance became effective. Also, if any such pre-existing structure is destroyed or damaged by casualty, it may be rebuilt in substantially the same location and substantially the same size, provided that such building is

commenced with in two years after the casualty, even though it would violate these regulations.

## **Section 10. Minimum Construction Standards**

- A. Building Practices. All building materials used and practices followed in the construction of buildings shall conform to generally accepted standards of good workmanship.
- B. Mobile homes. All mobile homes to be located within the Town of Dixmont must meet the minimum standards set forth in the Town of Dixmont Proposed Safety Standards for Manufactured Housing/Mobile Homes.
- C. Height. The Code Enforcement Officer may require the installation of an approved fire suppression system in a structure, any part of which is over thirty-five feet (35') in height.
- D. Electrical Installation. If deemed necessary by the Code Enforcement Officer, a person holding a master license issued by the State of Maine Electricians Examining Board shall inspect and certify that the electrical system is safe and meets the current National Electrical code.
- E. Plumbing Installation. All interior and exterior plumbing work shall be done in compliance with all applicable Maine State laws, rules and regulations pertaining to plumbing and to subsurface wastewater disposal.
- F. Roof Covering. The roof shall be covered with fire resistant material. Such covering shall be completed within a reasonable time, not to exceed eighteen (18) months after the rafters are in place.
- G. Chimneys. Chimneys shall be constructed of brick, masonry unites, or reinforced concrete or other materials approved for us in construction, of the type in question by a national association concerned with standards for fire protection or prevention in construction. Smoke pipes shall not be permitted.
- H. Chimney Liners. Masonry or reinforced concrete chimneys shall be lined with liners approved for use in construction of the type in question by a national association concerned with standards for fire protection or prevention in construction.
- I. Clean-outs. A clean-out shall be installed in all chimneys.
- J. Disposal of construction Waste. No material shall be disposed of by burning without obtaining the required permit to burn.
- K. Driveways. Each dwelling unit shall have a driveway that is not less than ten (10) feet in width. Additionally, said driveway shall extend into the lot at least twenty (20) feet beyond the boundary of the road right of way (ROW) if the boundary can be determined, or shall extend forty five (45) feet from the centerline of the road if the boundary cannot be determined, on all Town roads with a 49.5 foot ROW.

Excepting that on Town roads with a ROW width of 66 feet said driveway shall extend into the lot at least twenty (20) feet beyond the boundary of the road ROW if the

boundary can be determined, or shall extend fifty five (55) feet from the centerline of the road if the boundary cannot be determined.

**L. Road Access Control and Safety**

1. A sight distance of ten (10) feet for each mile per hour of posted speed limit shall be maintained or provided in each direction. The sight distance shall be determined with the front of a vehicle at least ten (10) feet behind the edge of the road shoulder.
2. Access from a road shall slope no greater than 2% upward or downward from the road shoulder for at least 25 feet onto the property.
3. Entrance permits onto State or Municipal roads are required to construction.

**Section 11. Enforcement and Penalties**

- A. Any violation of this Ordinance shall be deemed a nuisance.
- B. It shall be the duty of the Code Enforcement Officer to enforce this Ordinance. If the Code Enforcement Officer finds 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 building or structures; and abatement of nuisance conditions. A Copy of such notices shall be submitted to the selectmen and maintained as a permanent record.
- C. When the above action does not result in the correction or abatement of the violation, the selectmen, 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 Selectmen or the Code Enforcement Officer are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without Court action. All agreements are subject to the approval of the Selectmen.
- D. Any person, including but not limited to a landowner, a landowner's agent or a contractor, who orders or conducts any activity in violation of this Ordinance shall be penalized in accordance with the provisions of 30-A MRSA #4452.

**Section 12. Appeals**

- A. Board of Appeals. The Board of Appeals shall consist of five (5) persons appointed by the Selectmen, to which an appeal may be taken from any order of the Code Enforcement Officer, or from his refusal to issue a building permit, and an appeal may be taken from the Board of Appeals to the Superior Court as provided by the law. The term of office of each member of the Board of Appeals shall be for five (5) years with the terms so arranged that the term of one (1) member expires each year.



- B. Any person aggrieved by an administrative decision of the Code Enforcement Officer may, within 30 days of such decision, file an administrative or variance appeal with the Dixmont Board of Appeals. An “administrative decision” is any decision made in the process of permit application review and issuance or denial. Enforcement decisions are not appealable to the Dixmont Board of Appeals. An “enforcement decision” is any decision concerning activities undertaken after a permit has been granted or denied, and includes but is not limited to “stop work” orders, notices of violation, the commencement of a civil action under Rule 80K, Maine Rules of Civil Procedure, or other enforcement action allowed by law.
- C. The Board of Appeals shall schedule a hearing regarding the appeal request within 14 days of receiving the request for an appeal.
- D. Administrative Appeals. If it is shown at the appeals hearing that the Code Enforcement Officer erred in the interpretation of this Ordinance in making his or her decision, the Board of Appeals may amend, modify, remand or reverse the decision of the Code Enforcement Officer. If it cannot be shown that the code Enforcement Officer erred in the interpretation of this Ordinance, the Board of Appeals shall affirm the decision of the Code Enforcement Officer.
- E. Variance Appeals. A relaxation of the terms of this Ordinance in the form of a variance may be granted by the Board of Appeals where such variance would not be contrary to the public interest where, owing to conditions peculiar to the property and not the result of the action of the applicant, a literal enforcement of this Ordinance would result in undue hardship. In order to grant a variance for the reason of undue hardship, the Board of Appeals must find affirmatively each and all of the following criteria:
  - 1. That the land in question cannot yield a reasonable return unless a variance is granted;
  - 2. That the need for the variance is due to the unique circumstances of the property and not the general conditions of the neighborhood;
  - 3. That the granting of the variance will not alter the essential character of the locality, and
  - 4. That the hardship is not the result of action taken by the applicant or a prior owner.
- F. The Dixmont Board of Appeals shall, within 5 days of the appeals hearing, issue a written decision to the applicant and the Code Enforcement Officer. The written decision shall include all findings of fact and conclusions based on those findings.
- G. All appeals from Board of Appeals decisions may be taken to Penobscot County Superior Court pursuant to Rule 80B of the Maine Rules of Civil Procedure.

### **Section 13. Waivers**

- A. Any applicant seeking a waiver to the provision found in Section 8(D) of this Ordinance requiring back lots to be served by a driveway designed at least to the standards of a

driveway to a back lot pursuant to the Dixmont Subdivision Ordinance may apply for such a waiver, with 7 days' prior notice, to the Dixmont Planning Board at a regularly scheduled meetings. No provision other than this requirement in Section 8(D) of this Ordinance may be waived by action of the Planning Board.

- B. Within 7 days of the Planning Board meeting at which the waiver request is heard, the Planning Board shall issue such a waiver, in writing, to the applicant and a copy to the code Enforcement Officer, whenever sufficient evidence or documentation has been presented by the applicant to satisfy the Planning Board that the back lot in question:
  - 1. Will be used only as a seasonal, recreational parcel; and
  - 2. Will not be accessed by a motor vehicle registrable by the Maine Department of Motor Vehicles.
- C. The Planning Board shall place as a condition on any waiver granted under this section a requirement that the applicant must, prior to either converting the use of the building permitted under this waiver to a year round dwelling or accessing the back lot with a registrable motor vehicle, construct an access driveway designed at minimum to the standards for a driveway to a back lot in the Dixmont Subdivision Ordinance. A waiver-holder's failure to so construct such a road under these circumstances shall be constitute a violation of this Ordinance.

#### **Section 14. Changes in law or statutes or regulation**

References in this ordinance to other laws, ordinances, and regulations shall be deemed to incorporate into those references any amendments to those other laws, ordinances, and regulations, but only to the extent that an absurdity will not result.

#### **Section 15. Severability**

Should any section or provision of this Ordinance be declared to be invalid by the Courts, such invalidity any shall not affect any other section or provision of this Ordinance.

#### **Section 16. Effective Date**

This Ordinance shall become effective on the date adopted by the town meeting.

Final Version 6.

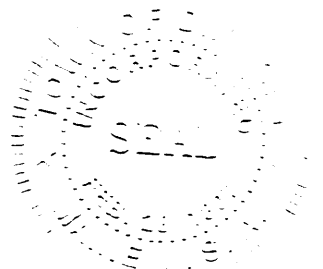
# DIXMONT SHORELAND ZONING ORDINANCE

Adopted by the Dixmont Legislative Body  
Pursuant to 38 M.R.S.A Section 438-A (1)

ADOPTED: MARCH 19, 2016

True Attested Copy: Julie A. Bonin

Julie A. Bonin, Dixmont Town Clerk



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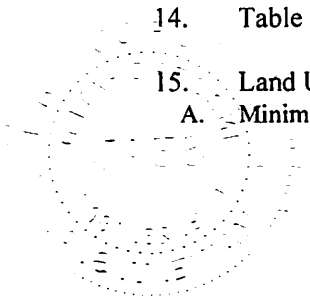
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## Shoreland Zoning Ordinance for the Municipality of Dixmont

### 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 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 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 435-448 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 great ponds; within 250 feet, horizontal distance, of the upland edge of a freshwater wetland; and within 75 feet, horizontal distance, of the normal high-water line of a stream. This Ordinance also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending or located below the normal high-water line of a water body or within a wetland.

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NOTE: Terms are defined in Section 17, including but not limited to: freshwater wetland, great pond and stream.

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### 4. Effective Date of Ordinance and Ordinance Amendments

This Ordinance, which was adopted by the municipal legislative body on March 19, 2016 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.

### 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 (are) made a part of this Ordinance:

- (1) Resource Protection
- (2) Limited Residential
- (3) 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. Nonconformance

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NOTE: Refer to Section 17 for definitions of nonconforming condition, nonconforming lot, nonconforming structure and nonconforming use.

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### A. Purpose.

It is the intent of this Ordinance to promote land use conformities, except that nonconforming 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 nonconforming condition shall not be permitted to become more nonconforming.

### B. General

- (1) **Transfer of Ownership.** Nonconforming structures, lots, and uses may be transferred, and the new owner may continue the nonconforming use or continue to use the nonconforming 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 nonconforming uses and structures including repairs or renovations that do not involve expansion of the nonconforming use or structure, and such other changes in a nonconforming use or structure as federal, state, or local building and safety codes may require.

### C. Nonconforming Structures

#### (1) Expansions.

All new structures must meet the shoreline setback requirements contained in Section 15(B). A nonconforming 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 nonconformity of the structure and is in accordance with the subsections of Section 12(C)(1).

- (a) Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or wetland setback requirement.
- (b) Expansion of any portion of a structure within 25 feet of the normal high-water line of a water body, tributary stream or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or wetland setback requirement.

- (c) Notwithstanding Sections 12(C)(1)(b), if a nonconforming principal structure is entirely located less than 25 feet from the normal high-water line of a water body, tributary stream or upland edge of a wetland, that structure may be expanded as follows, as long as all other applicable standards of this Ordinance are met and the expansion is not prohibited by Section 12(C)(1) above:
- (i) The maximum total footprint of the principal structure may not be expanded to an area greater than 800 square feet.
  - (ii) The maximum height of the principal structure may not be made greater than 15 feet or the height of the existing structure, whichever is greater.
- (d) All other nonconforming principal and accessory structures that do not meet the water body, tributary stream or wetland setback requirements may be expanded or altered as follows, as long as other applicable standards of this Ordinance are met and the expansion is not prohibited by Section 12(C)(1) and subsections (a), (b) or (c) above:
- (i) For structures located less than 75 feet from the normal high-water line of a water body, tributary stream or upland edge of a wetland, the maximum combined total footprint of all structures may not be expanded to an area greater than 1,000 square feet.
  - (ii) For structures located less than 75 feet from the normal high-water line of a water body, tributary stream or upland edge of a wetland, the maximum height of any structure may not be made greater than 20 feet or the height of the existing structure, whichever is greater.
  - (iii) For structures located less than 100 feet from the normal high-water line of a great pond, the maximum combined total footprint of all structures may not be expanded to an area greater than 1,500 square feet.
  - (iv) For structures located less than 100 feet from the normal high-water line of a great pond, the maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater.
  - (v) For structures located less than 100 feet from the normal high-water line of a great pond, any portion of those structures located less than 75 feet from the normal high-water line of a water body, tributary stream or upland edge of a wetland must meet the footprint and height requirements of Sections 12(C)(1)(d)(i) and (ii).
- (e) In addition to the limitations in Section 12(C)(1) and subsections (a), (b) and (c) above, structures that are nonconforming due to their location within the Resource Protection District and are located at less than 250 feet from the normal high-water line of a water body or the upland edge of a wetland may be expanded or altered as follows, as long as other applicable standards of this Ordinance are met:
- (i) The maximum combined total footprint of all structures may not be expanded to an area greater than 1,500 square feet.

- (ii) The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater.
- (iii) Any portion of the structures located less than 100 feet from the normal high-water line of a great pond, must meet the footprint and height requirements of Sections 12(C)(1)(d)(iii) and (iv).
- (iv) Any portion of the structures located 75 feet from the normal high-water line of a water body, tributary stream or upland edge of a wetland must meet the footprint and height requirements of Sections 12(C)(1)(d)(i) and (ii).
- (f) Any approved plan for expansion of a nonconforming structure under Section 12(C)(1) must be recorded by the applicant in the Penobscot County Registry of Deeds within 90 days of approval. The recorded plan must include the existing and proposed footprint of structures on the property, the existing and proposed height of structures on the property, the shoreland zone boundary and evidence of approval by the municipal permitting authority.

**(2) Foundations.**

Whenever a new, expanded or replacement foundation is constructed under a nonconforming structure, the structure and new foundation must be placed such that the shoreline 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)(3) below.

**(3) Relocation.**

A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the 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 nonconforming.

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 accordance with Section 15(S). In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

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.

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.

The Planning Board shall require replanting in accordance with Section 15(S).

**(4) Reconstruction or Replacement.**

Any nonconforming 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 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 Section 12(C)(3) above. In no case shall a structure be reconstructed or replaced so as to increase its nonconformity.

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 nonconforming footprint of the reconstructed or replaced structure at its new location. If the total amount of footprint 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)(3) above.

Any nonconforming 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)(3) above, the physical condition and type of foundation present, if any.

**(5) Change of Use of a Nonconforming Structure.**

The use of a nonconforming 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 other functionally water-dependent uses.

#### **D. Nonconforming Uses**

##### **(1) Expansions.**

Expansions of nonconforming uses are prohibited, except that nonconforming 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) above.

##### **(2) Resumption Prohibited.**

A lot, building or structure in or on which a nonconforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a nonconforming 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 nonconforming use may be changed to another nonconforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources, including water dependent uses, 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)(5) above.

#### **E. Nonconforming Lots**

(1) **Nonconforming Lots:** A nonconforming 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 nonconforming 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.

### 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.

- (1) Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands and wetlands associated with great ponds, which are rated "moderate" or "high" value by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) as of January 2, 1973.
- (2) Areas of two or more contiguous acres with sustained slopes of 20% or greater.
- (3) Areas of two (2) or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater wetland as defined, and which are not surficially connected to a water body during the period of normal high water.

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NOTE: These areas usually consist of forested wetlands abutting water bodies and non-forested wetlands.

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#### 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.

#### C. 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 wetland. Where a stream and its associated shoreland area are located within two-hundred and fifty (250) feet, horizontal distance, of a great pond or wetlands, that land area shall be regulated under the terms of the shoreland district associated with that great pond 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.

**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

SP - Stream Protection

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NOTE: Terms are defined in Section 17, including but not limited to: functionally water-dependent uses.

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TABLE 1. LAND USES IN THE SHORELAND ZONE

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

<sup>1</sup>In RP not allowed within 75 feet horizontal distance, of the normal high-water line of great ponds, except to remove safety hazards.

<sup>2</sup>Requires permit from the Code Enforcement Officer if more than 100 square feet of surface area, in total, is disturbed.

<sup>3</sup>In RP not allowed in areas so designated because of wildlife value.

<sup>4</sup>Provided that a variance from the setback requirement is obtained from the Board of Appeals.

<sup>5</sup>See further restrictions in Section 15(L).

<sup>6</sup>Except as provided in Section 15(H).

<sup>7</sup>Except for commercial uses otherwise listed in this Table, such as marinas and campgrounds, that are allowed in the respective district.

<sup>8</sup>Excluding bridges and other crossings not involving earthwork, in which case no permit is required.

<sup>9</sup>Permit not required but must file a written "notice of intent to construct" with CEO.

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, river, stream or brook and operates in such a manner that material or soil may be washed into them:

- A. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;
- B. Draining or otherwise dewatering;
- C. 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.

**A. Minimum Lot Standards**

(1)	Minimum Lot Area (sq. ft.)	Minimum Shore Frontage (ft.)
(a) Residential per dwelling unit		
(i) Within the Shoreland Zone	40,000	200
(b) Governmental, Institutional, Commercial or Industrial per principal structure	60,000	300
(c) Public and Private Recreational Facilities	40,000	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. 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.

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NOTE: The Natural Resources Protection Act, 38 M.S.R.A. sections 480-A through 480-HH, requires the Department of Environmental Protection to designate areas of "significant wildlife habitat".

Permitting under the Natural Resources Protection Act for activities adjacent to significant wildlife habitat areas may require greater setbacks. Contact your local Department of Environmental Protection office to see if additional permitting is required.

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**In addition:**

- (a) The water body, tributary stream, or wetland setback provision shall neither apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.
- (b) On a nonconforming 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 non-vegetated surfaces and vegetation clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.

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NOTE: Refer to Section 17 for definition of tributary stream.

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- (2) Principal or accessory structures, and expansions of existing structures, 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. Accessory structures may be placed in accordance with the standards of the Floodplain Management Ordinance that is consistent with the April 2005 or later version under the National Flood Insurance Program.
- (4) Non-vegetated surfaces shall not exceed twenty (20) percent of the portion of the lot located within the shoreland zone. Non-vegetated surfaces include, but are not limited to the following: structures, driveways, parking areas, and other areas from which vegetation has been removed. Naturally occurring ledge and rock outcroppings are not counted as non-vegetated surfaces for lots that were recorded on March 24, 1990, and that have been in continuous existence since that date.

Section 15(B)(4) shall not apply to public boat launching facilities, regardless of the district in which the facility is located.

- (5) Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep

- slopes or unstable soils provided: that the structure is limited to a maximum of four (4) feet in width; that the structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland, (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. section 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.
- (6) Retaining wall(s) 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:
  - (c) 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:
  - (d) 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 flood plain soils:
  - (f) The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks: and
  - (g) A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:
    - (i) The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch:
    - (ii) Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff:
    - (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 otherwise applicable standards in Section 15(P)(2)(a), may traverse the buffer.

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

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**C. Piers, Docks, Wharves, Bridges and Other Structures and Uses Extending or Located Below the Normal High-Water Line of a Water Body or Within a Wetland; and Shoreline Stabilization.**

- (1) No more than one structure extending or located below the normal high-water line of a water body or within a wetland is allowed on a single lot; except that when a single lot contains at least twice the minimum shore frontage as specified in Section 15(A), a second structure may be allowed and may remain as long as the lot is not further divided.
- (2) Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
- (3) The location shall not interfere with existing developed or natural beach areas.
- (4) The facility shall be located so as to minimize adverse effects on fisheries.
- (5) The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A temporary pier, dock or wharf shall not be wider than six feet for non-commercial uses.
- (6) No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending or located below the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity.

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NOTE: A structure constructed on a float or floats is prohibited unless it is designed to function as, and is registered with the Maine Department of Inland Fisheries and Wildlife as, a watercraft.

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- (7) New permanent piers and docks shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.
- (8) No existing structures built on, over or abutting a pier, dock, wharf or other structure extending or located below the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district.
- (9) Structures built on, over or abutting a pier, wharf, dock or other structure extending or located below the normal high-water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.

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

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- (10) The Planning Board may approve shoreline stabilization of an eroding shoreline, provided that the following requirements are met:
  - (a) Construction equipment must access the shoreline by barge when feasible, as determined by the Planning Board.

(b) When necessary, the removal of vegetation to allow for construction equipment access to the stabilization site via land must be limited to no more than twelve (12) feet in width. When the shoreline stabilization is complete, the construction equipment access way must be restored.

(b) Any restoration or revegetation shall occur in accordance with Section 15(S).

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NOTE: A permit pursuant to the Natural Resources Protection Act is required from the Department of Environmental Protection for shoreline stabilization activities.

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#### **D. Campgrounds.**

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

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

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

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

- (1) On a vacant lot, 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) On a lot that contains a principal use or structure, the lot shall contain the minimum lot dimensional requirements for that principal use or structure separately from the thirty thousand (30,000) square feet of lot area within the shoreland zone required per individual private campsite.
- (3) 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.
- (4) 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.

- (5) 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.
- (6) 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.
- (7) When a recreational vehicle, tent or similar shelter is placed on-site for more than one hundred and twenty (120) days per year, all requirements for residential structures shall be met, including the installation of a subsurface sewage disposal system in compliance with the State of Maine Subsurface Wastewater Disposal Rules unless served by public sewage facilities.

**F. Commercial and Industrial Uses.**

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

**G. Parking Areas**

- (1) Parking areas shall meet the shoreline and tributary stream setback requirements for structures for the district in which such areas are located. The setback requirement for parking areas

- serving public boat launching facilities 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.

#### **H. Roads and Driveways.**

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

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

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

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

- (2) Existing public roads may be expanded within the legal road right of way regardless of 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(T).
- (5) Road and driveway grades shall be no greater than ten (10) percent except for segments of less than two hundred (200) feet.
- (6) In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams or wetlands, roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least (50) feet plus two times the average slope, in width between the outflow point of the ditch or culvert and the normal high-water line of a water body, tributary stream, or upland edge of a wetland. Surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.
- (7) Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow gains sufficient volume or head to erode the road, driveway, or ditch. To accomplish this, the following shall apply:
  - (a) Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road, or driveway at intervals no greater than indicated in the following table:

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

- (b) Drainage dips may be used in place of ditch relief culverts only where the grade is ten (10) percent or less.
- (c) On sections having slopes greater than ten (10) percent, ditch relief culverts shall be placed at approximately a thirty (30) degree angle downslope from a line perpendicular to the centerline of the road or driveway.
- (d) Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning, and their inlet and outlet ends shall be stabilized with appropriate materials.



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

#### **I. Signs.**

The following provisions shall govern the use of signs:

- (1) Signs relating to goods and services sold on the premises shall be allowed, provided that such signs shall not exceed six (6) square feet in area and shall not exceed two (2) signs per premises. Signs relating to goods or services not sold or rendered on the premises shall be prohibited.
- (2) Name signs are allowed, provided such signs shall not exceed two (2) signs per premises, and shall not exceed twelve (12) square feet in the aggregate.
- (3) Residential users may display a single sign not over three (3) square feet in area relating to the sale, rental, or lease of the premises.
- (4) Signs relating to trespassing and hunting shall be allowed without restriction as to number provided that no such sign shall exceed two (2) square feet in area.
- (5) Signs relating to public safety shall be allowed without restriction.
- (6) No sign shall extend higher than twenty (20) feet above the ground.
- (7) Signs may be illuminated only by shielded, non-flashing lights.

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

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

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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.

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

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

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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.

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

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

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

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

Mineral extraction may be permitted under the following conditions:

- (1) A reclamation plan shall be filed with, and approved, by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of Section 15 (M)(3) below.
- (2) No part of any extraction operation, including drainage and runoff control features, shall be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond, 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 seventy-five (75) 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.

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NOTE: The State of Maine Solid Waste Laws, 38 M.R.S.A., section 1301 and the solid waste management rules, Chapters 400-419 of the Department of Environmental Protection's regulations may contain other applicable provisions regarding disposal of such materials.

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- (b) The final graded slope shall be two and one-half to one (2 1/2:1) (horizontal:vertical) 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.

## **N. Agriculture**

- (1) All spreading of manure shall be accomplished in conformance with the *Manure Utilization Guidelines* published by the former 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. Nonconformance with the provisions of said plan shall be considered to be a violation of this Ordinance.

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NOTE: Assistance in preparing a Conservation Plan may be available through the local Soil and Water Conservation District office.

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- (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; within seventy-five (75) feet, horizontal distance, from other water bodies; 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; within seventy-five (75) feet, horizontal distance, of other water bodies; 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 that has been filed with the Planning Board.

**O. Timber Harvesting - Repealed (Now regulated by Maine Forest Service)**

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

- (1) In a Resource Protection District abutting a great pond, there shall be no cutting of vegetation within the shoreline buffer extending 75 feet, horizontal distance, inland from the normal high-water line, except to remove hazard trees in accordance with Section 15(Q).

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

- (2) Except in areas as described in Section P(1) above, within a shoreline buffer extending one-hundred (100) feet, horizontal distance, inland from the normal high-water line of a great pond, or within a shoreline buffer extending seventy-five (75) feet, horizontal distance, from any other water body, tributary stream, or the upland edge of a wetland, 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 single footpath not to exceed six (6) feet in width as measured between tree trunks and/or shrub stems is allowed for accessing the shoreline provided that a cleared line of sight to the water through the shoreline buffer is not created.
  - (b) Selective cutting of trees within the shoreline buffer is allowed provided that a well-distributed stand of trees and other natural vegetation is maintained. For the purposes of Section 15(P)(2)(b) a "well-distributed stand of trees" adjacent to a great pond, or stream flowing 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.

Diameter of Tree at 4-1/2 feet Above Ground Level (inches)	Points
2 < 4 in.	1
4 < 8 in.	2

8 < 12 in.	4
12 in. or greater	8

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

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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.

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The following shall govern in applying this point system:

- (i) The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;
- (ii) Each successive plot must be adjacent to, but not overlap a previous plot;
- (iii) Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this Ordinance;
- (iv) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by is Ordinance;
- (v) Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

For the purposes of Section 15(P)(2)(b) "other natural vegetation" is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one half (4 ½) feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 5 saplings have been recruited into the plot.

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

- (c) In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath 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 the vegetation in the shoreline buffer, removal of storm-damaged, hazard or dead trees and any required replanting shall occur in accordance with Section 15(Q).
  - (f) In order to maintain the vegetation in the shoreline buffer, clearing or removal of vegetation for allowed activities, including associated construction and related equipment operation, within or outside the shoreline buffer, must comply with the requirements of Section 15(P)(2).
- (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.
  - (4) 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 applies to the portion of the lot within the shoreland zone, including the shoreline buffer area.
  - (5) Legally existing nonconforming cleared openings may be maintained, in accordance with Section 15(R). If these areas, fields or other cleared openings have reverted back to primarily woody vegetation, as a result of not maintaining them in accordance with Section 15(R), then the provisions of Section 15(P) shall apply.

#### **Q. Hazard Trees, Dead Trees and Storm-Damaged Trees**

- (1) Hazard trees may be removed without a permit after consultation with the Code Enforcement Officer, provided the following requirements are met:
  - (a) Within the shoreline buffer, if the removal of a hazard tree results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, the opening shall be replaced with native tree species, unless there is new tree growth already present near to where the hazard tree was removed. New tree growth is considered to be at least two (2) inches in diameter, measured at four and one half (4.5) feet above ground level. If new growth is not present, then replacement trees shall consist of native species, be at least four (4) feet in height and be no less than two (2) inches DBH. Stumps shall not be removed.
  - (b) Outside the shoreline buffer, if the removal of hazard trees results in more than forty (40) percent of the volume of trees, four (4) inches or more in diameter as measured at four and one half (4.5) feet above ground level, being removed in any ten (10) year period; or results in cleared openings of more than twenty-five (25) percent of the lot area within the shoreland zone or more than ten thousand (10,000) square feet, whichever is greater; then replacement with native tree species is required, unless there is new tree growth already present near to where the hazard tree was removed. New tree growth is considered to be at

least two (2) inches DBH. If new growth is not present, then replacement trees shall consist of native species and be no less than two (2) inches DBH.

- (c) The code enforcement officer may require the applicant to submit an evaluation from a licensed forester or arborist before any hazard tree can be removed within the shoreland zone.
  - (d) The code enforcement officer may require more than a one-for-one replacement for removed hazard trees that exceeded eight (8) inches in diameter at four and one half (4.5) feet above ground level.
- (2) Dead trees may be removed without a permit, provided the following requirements are met:
- (a) The trees are dead from natural causes. Dead trees are those that contain no foliage during the growing season.
  - (b) The removal of dead trees does not result in the creation of new lawn areas or other permanently cleared areas.
  - (c) Stumps shall not be removed.
- (3) Storm-damaged trees may be removed without a permit after consultation with the Code Enforcement Officer, provided the following requirements are met:
- (a) Within the shoreline buffer, if the removal of storm-damaged trees results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, the following shall be required:
    - (i) The area shall be required to naturally revegetate. If after one growing season, no natural regeneration or regrowth is present, replanting of native tree seedlings or saplings shall be required at a density of one seedling/sapling per every eighty (80) square feet of open canopy.
    - (ii) The removal of storm-damaged trees does not result in the creation of new lawn areas or other permanently cleared areas.
    - (iii) Stumps shall not be removed.
    - (iv) Limbs damaged from a storm event may be pruned even if they extend beyond the bottom one-third (1/3) of the tree.
  - (b) Outside the shoreline buffer, if the removal of storm-damaged trees results in more than forty (40) percent of the volume of trees, four (4) inches or more in diameter as measured at four and one half (4.5) feet above ground level, being removed in any ten (10) year period; or results in cleared openings of more than twenty-five (25) percent of the lot area within the shoreland zone or more than ten thousand (10,000) square feet, whichever is greater; then the area shall be required to naturally revegetate. If after one growing season, no natural regeneration or regrowth is present, replanting of native tree seedlings or saplings shall be required on a one-for-one basis.

**R. Exemptions to Section 15(P)**

The following activities are exempt from the standards for clearing or removal of vegetation set forth in Section 15(P), provided that all other applicable requirements of this Ordinance are complied with, and the removal of vegetation is limited to that which is necessary:

- (1) The clearing or removal of vegetation that occurs at least once every two (2) years for the maintenance of legally existing areas that do not comply with the standards of Section 15(P), such as but not limited to cleared openings in the canopy or fields. If any of these areas revert back to primarily woody vegetation, due to a lack of removal of vegetation every two (2) years, the requirements of Section 15(P) shall apply.
- (2) The clearing or removal of vegetation from the location of allowed structures or allowed uses, when the shoreline setback requirements of Section 15(B) are not applicable.
- (3) The clearing or removal of vegetation from the location of public swimming areas associated with allowed public recreational facilities.
- (4) The clearing or removal of vegetation associated with allowed agricultural uses, provided that all requirements of Section 15(N) are complied with, and that best management practices are utilized.
- (5) The clearing or removal of non-native invasive vegetation, provided that the following requirements are met:
  - (a) If clearing or removal of vegetation occurs via wheeled or tracked motorized equipment, then the wheeled or tracked motorized equipment is operated and stored at least twenty-five (25) feet, horizontal distance, from the shoreline, except that the wheeled or tracked motorized equipment may be operated or stored on existing structural surfaces, such as pavement or gravel;
  - (b) The clearing or removal of vegetation within twenty-five (25) feet, horizontal distance, from the shoreline occurs via hand tools; and
  - (c) If the clearing or removal of non-native invasive vegetation results in a standard of Section 15(P) being exceeded, then the area shall be revegetated in accordance with Section 15(S) to achieve compliance with the applicable standard(s) of Section 15(P).

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NOTE: An updated list of non-native invasive vegetation is maintained by the Department of Agriculture, Conservation and Forestry's Natural Areas Program.  
[http://www.maine.gov/dacf/mnap/features/invasive\\_plants/invasives.htm](http://www.maine.gov/dacf/mnap/features/invasive_plants/invasives.htm)

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- (6) The clearing or removal of vegetation associated with emergency response activities conducted by the Department, the U.S. Environmental Protection Agency, the U.S. Coast Guard, and their agents.

**S. Revegetation Requirements**



When revegetation is required to address the removal of non-native invasive species of vegetation, to address removal of vegetation in conjunction with shoreline stabilization, in response to violations of the standards set forth in Section 15(P), or as a mechanism to allow for development that may otherwise not be permissible due to the standards of Section 15(P), then revegetation shall comply with the following requirements:

- (1) The applicant must submit a revegetation plan, prepared with and signed by a qualified professional, that describes revegetation activities and maintenance. The plan must include a scaled site plan, depicting where vegetation was, or is to be removed, where existing vegetation is to remain, and where vegetation is to be planted, including a list of all vegetation to be planted.
- (2) Revegetation must occur along the same segment of shoreline and in the same area where vegetation was removed, and must occur at a density comparable to the pre-existing vegetation. If this is not feasible due to shoreline stabilization, then revegetation must occur along the same segment of shoreline and as close as possible to the area where vegetation was removed.
- (3) If part of a permitted activity, revegetation shall occur before the expiration of the permit. If the activity or revegetation is not completed before the expiration of the permit, a new revegetation plan shall be submitted with any renewal or new permit application.
- (4) Revegetation activities must meet the following requirements for trees and saplings:
  - (a) All trees and saplings removed must be replaced with native noninvasive species;
  - (b) Replacement vegetation must consist of saplings at a minimum;
  - (c) If more than three (3) trees or saplings are planted, then at least three (3) different species shall be used;
  - (d) No one species shall make up 50% or more of the number of trees and saplings planted;
  - (e) If revegetation is required for shoreline stabilization, and it is not possible to plant trees and saplings in the same area where trees or saplings were removed, then trees or saplings must be planted in a location that effectively reestablishes the screening between the shoreline and structures; and
  - (f) A survival rate of at least eighty (80) percent of planted trees/saplings is required for a minimum of five (5) years.
- (5) Revegetation activities must meet the following requirements for all woody vegetation and for other vegetation under three (3) feet in height:
  - (a) All woody vegetation and vegetation under three (3) feet in height must be replaced with native noninvasive species of woody vegetation and vegetation under three (3) feet in height as applicable;

- (b) Woody vegetation and vegetation under three (3) feet in height shall be planted in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;
  - (c) If more than three (3) woody vegetation plants are to be planted, then at least three (3) different species shall be planted;
  - (d) No one species shall make up 50% or more of the number of planted woody vegetation plants; and
  - (e) Survival of planted woody vegetation and vegetation under three feet in height must be sufficient to remain in compliance with the standards contained in Section 15(P) for a minimum of five (5) years.
- (6) Revegetation activities must meet the following requirements for ground vegetation and ground cover:
- (a) All ground vegetation and ground cover removed must be replaced with native herbaceous vegetation, in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;
  - (b) Where necessary due to a lack of sufficient ground cover, the area must be supplemented with leaf mulch and/or bark mulch at a minimum of four (4) inches deep to prevent erosion and provide for effective infiltration of stormwater; and
  - (c) Survival and functionality of ground vegetation and ground cover must be sufficient to remain in compliance with the standards contained within this Ordinance for a minimum of five (5) years.

#### **T. 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. Drainage ways 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.
  - (6) When an excavation contractor will perform these activities, compliance with the following shall be required:
    - (a) A person certified in erosion control practices by the Maine Department of Environmental Protection shall be responsible for management of erosion and sedimentation control practices at the site. This person shall be present at the site each day these activities occur for a duration that is sufficient to ensure that proper erosion and sedimentation control practices are followed. This is required until installation of erosion and sedimentation control measures that will either stay in place permanently or stay in place until the area is sufficiently covered with vegetation necessary to prevent soil erosion.
    - (b) Include on the required plan or permit application, the name and certification number of the person who will oversee activities causing or resulting in soil disturbance.

#### **U. 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.

**V. 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.

**W. 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.

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NOTE: Municipal officials should contact the Maine Historic Preservation Commission for the listing and location of Historic Places in their community.

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**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**

- (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 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;
- (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 – Intentionally Blank**

#### **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 non-vegetated surfaces, 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 nonconformity 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, in accordance with 30-A M.R.S.A section 4353-A, the Code Enforcement Officer may approve a permit to the owner of a residential dwelling unit for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses that dwelling. The permit is deemed to include the variance, which shall be solely for installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The Code Enforcement Officer may impose conditions on the permit, including limiting the permit 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 ramps and associated railing, and wall or roof systems necessary for the safety or effectiveness of the structure. Such permitting is subject to Sections 16(H)(2)(f) and 16(H)(4)(b)(iv) below.
- (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 is 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.
- (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.

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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).

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**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 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 green-house products. Agriculture does not include timber harvesting.

**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.

**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.

**Excavation contractor** - an individual or firm that either is engaged in a business that causes the disturbance of one or more cubic yards of soil, or is in a business in which the disturbance of one or more cubic yards of soil results from an activity that the individual or firm is retained to perform. Disturbance includes: grading, filling, and removal. A person or firm engaged in agriculture or timber harvesting activities is not considered an excavation contractor as long as best management practices for erosion and sedimentation control are used. Municipal, state and federal employees engaged in projects associated with that employment are not considered excavation contractors.

**Expansion of a structure** - an increase in the footprint 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 footprint 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.

**Footprint** - the entire area of ground covered by the structure(s) on a lot, including but not limited to: cantilevered or similar overhanging extensions, as well as unenclosed structures such as patios and decks.

**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, including, but not limited to, all post supports, basements, slabs, frostwalls, or other base consisting of concrete, block, brick or similar material.

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

1. Of ten or more contiguous acres; or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook, such that in a natural state, the combined surface area is in excess of 10 acres; and
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, 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, finfish and shellfish processing, fish-related storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, shoreline structures necessary for erosion control purposes, 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 waters. Recreational boat storage buildings are not considered to be a functional water-dependent use.

**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.

**Hazard tree** - a tree with a structural defect, combination of defects, or disease resulting in a structural defect that under the normal range of environmental conditions at the site exhibits a high probability of failure and loss of a major structural component of the tree in a manner that will strike a target. A normal range of environmental conditions does not include meteorological anomalies, such as, but not limited to: hurricanes, hurricane-force winds, tornados, microbursts, or significant ice storm events. Hazard trees also include those trees that pose a serious and imminent risk to bank stability. A target is the area where personal injury or property damage could occur if the tree or a portion of the tree fails. Targets include roads, driveways, parking areas, structures, campsites, and any other developed area where people frequently gather and linger.

**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 non-vegetated surfaces, 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.

**Licensed Forester** - a forester licensed under 32 M.R.S.A. Chapter 76.

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

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

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

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

**Mineral extraction** - any operation within any twelve (12) month period which removes more than one hundred (100) cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and to transport the product removed, away from the extraction site.

**Minimum lot width** - the closest distance between the side lot lines of a lot. When only two lot lines extend into the shoreland zone, both lot lines shall be considered to be side lot lines.

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

**Native** – indigenous to the local forests.

**Nonconforming condition** – nonconforming lot, structure or use which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendment took effect.

**Nonconforming 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.

**Nonconforming structure** - a structure which does not meet any one or more of the following dimensional requirements; setback, height, non-vegetated surfaces or footprint, but which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

**Nonconforming 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.

**Non-native invasive species of vegetation** - species of vegetation listed by the Maine Department of Agriculture, Conservation and Forestry as being invasive in Maine ecosystems and not native to Maine ecosystem.

**Normal high-water line** - that line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with 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.

**Person** - an individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having a joint or common interest, or other legal entity.

**Piers, docks, wharves, bridges and other structures and uses** extending beyond or located below the normal high-water line or within a wetland.

**Temporary:** Structures which remain in or over the water for less than seven (7) months in any period of twelve (12) consecutive months.

**Permanent:** Structures which remain in or over the water for seven (7) months or more in any period of twelve (12) consecutive months.

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

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

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

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

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

**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.

**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.

**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.

**Sapling** – a tree species that is less than two (2) inches in diameter at four and one half (4.5) feet above ground level.

**Seedling** – a young tree species that is less than four and one half (4.5) feet in height above ground level.



**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 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 wetland.

**Storm-damaged tree** – a tree that has been uprooted, blown down, is lying on the ground, or remains standing, and is damaged beyond the point of recovery as a result of a storm event.

**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, highest resolution version of the national hydrography dataset available from the United States Geological Survey, on the website of the United States Geological Survey or the national map, to the point where the stream meets the shoreland zone of a great pond or wetland. When a stream meets the shoreland zone of a Great Pond or wetland and a channel forms downstream of the great pond or wetland as an outlet, that channel is also a stream.

**Structure** - whether temporary or permanent: anything located, built, constructed or erected for the support, shelter or enclosure of persons, animals, goods or property of any kind; anything built, constructed or erected on or in the ground. The term structure includes decks, patios, and satellite dishes. Structure does not include fences; poles; wiring, guy wires, guy anchors and other aerial equipment normally associated with service drops; subsurface waste water disposal systems as defined in Title 30-A, section 4201, subsection 5; geothermal heat exchange wells as defined in Title 32,

section 4700-E, subsection 3-C; and wells or water wells as defined in Title 32, section 4700-E, subsection 8.

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

**Subsurface sewage disposal system** – any system designed to dispose of waste or waste water on or beneath the surface of the earth; includes, but is not limited to: septic tanks; disposal fields; grandfathered cesspools; holding tanks; pretreatment filter, piping, or any other fixture, mechanism, or apparatus used for those purposes; does not include any discharge system licensed under 38 M.R.S.A. section 414, any surface waste water disposal system, or any municipal or quasi-municipal sewer or waste water treatment system.

**Sustained slope** - a change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.

**Timber harvesting** - the cutting and removal of timber for the primary purpose of selling or processing forest products. The cutting or removal of vegetation in the shoreland zone associated with any other land use activity, and 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 vegetation shall be regulated pursuant to Section 15 (P), *Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting*.

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NOTE: Timber harvesting within the shoreland zone is regulated by the Maine Forest Service.

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**Tree** – a woody perennial plant that has a well-defined trunk(s) at least two (2) inches in diameter at four and one half (4.5) feet above the ground, that has a more or less definite crown and that reaches a height of at least ten (10) feet at maturity.

**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.

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NOTE: Water setback requirements apply to tributary streams within the shoreland zone.

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**Upland edge of a wetland** - the boundary between upland and wetland. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are six (6) meters (approximately twenty (20) feet) tall or taller.

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

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

**Water body** - any great pond or stream.

**Water crossing** - any project extending from one bank to the opposite bank of a 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.

**Wetland** - a freshwater wetland.

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

TOWN OF DIXMONT

DOG ORDINANCE

DEFINITIONS

- (A) "DOG" SHALL BE INTENDED TO MEAN BOTH MALE AND FEMALE DOGS.
- (B) "OWNER" SHALL BE INTENDED TO MEAN ANY PERSON OR PERSONS, FIRM, ASSOCIATION OR HAVING THE CONTROL OF A DOG.
- (C) "OWNER SHALL ALSO BE INTENDED TO MEAN AND INCLUDE, WHEN USED IN THIS ORDINANCE, THE PARENTS OR GUARDIAN OF A MINOR WHO OWNS, KEEPS OR HAS IN HIS POSSESSION, A DOG.
- (D) "AT LARGE" SHALL BE INTENDED TO MEAN OFF THE PREMISES OF THE DOGS OWNER OR A MEMBER OF HIS IMMEDIATE FAMILY EITHER BY LEASH, CORD, CHAIN, "AT HEEL" OR UNDER COMMAND.
- (E) "ANIMAL CONTROL OFFICER" SHALL BE INTENDED TO MEAN ANY PERSON AUTHORIZED BY THE SELECTMAN, ANY DULY AUTHORIZED POLICE OFFICER OR CONSTABLE.

LICENSE REQUIRED: OWNER DEFINED

- (A) NO DOG SHALL BE KEPT WITHIN THE LIMITS OF THE TOWN UNLESS SUCH DOG HAS BEEN LICENSED BY ITS OWNER IN ACCORDANCE WITH THE STATUTES OF THE STATE.
- (B) OWNER SHALL MEAN ANY PERSON OWNING, KEEPING OR HARBORING A DOG.

DOGS RUNNING AT LARGE PROHIBITED

NO OWNER OR PERSON HAVING CUSTODY OF ANY DOG SHALL CAUSE OR PERMIT ANY DOG OWNED OR KEPT BY HIM OR IN HIS POSSESSION OR UNDER HIS CONTROL TO RUN AT LARGE WITHIN THE TOWN OF DIXMONT. A DOG, LICENSED OR UNLICENSED WITHIN THE TOWN OF DIXMONT, A DOG WHILE IN OR ON ANY PUBLIC WAY OR PLACE, EXCEPT AS HEREINAFTER PROVIDED, SHALL BE UNDER RESTRAINT WITHIN THE MEANING OF THIS ORDINANCE. IF IT IS CONTROLLED BY A LEASH, CORD, CHAIN OR "AT HEEL" OR UNDER THE CONTROL OF A PERSON AND OBEDIENT TO THAT PERSON'S COMMANDS, OR ON OR WITHIN A VEHICLE BEING DRIVEN OR PARKED ON THE STREETS OR WITHIN THIS ORDINANCE SHALL BE HELD TO REQUIRE THE LEASHING OR RESTRAINT OF ANY DOG WHILE ON ITS OWNER'S OR KEEPER'S PREMISES OR IN OR ON ANY PREMISES USED OR OCCUPIED AS A DWELLING HOUSE. A LEASH, CORD OR CHAIN SHALL NOT BE MORE THAN EIGHT (8) FEET LONG. ANY DOG FOUND RUNNING AT LARGE IN VIOLATION OF THIS SECTION MAY BE IMPOUNDED BY THE ANIMAL CONTROL OFFICER (ACO). OR BY ANY DULY AUTHORIZED POLICE OFFICER OR CONSTABLE. THE OWNER OR KEEPER OF ANY DOG THAT IS IMPOUNDED MAY CLAIM THE DOG PROVIDING IT IS PROPERLY LICENSED UPON PAYMENT TO THE TOWN OF AN IMPOUNDING FEE OF \$10.00 IN ADDITION TO SUCH BOARDING FEES AS MAY BE DUE AND PAYABLE. ANY DOG UNCLAIMED WITHIN TEN (10) DAYS OF THE DATE OF IMPOUNDING SHALL BECOME THE PROPERTY OF THE TOWN OF DIXMONT AND MAY BE DISPOSED OF IN A SUITABLE MANNER.

#### VICIOUS AND NOISY DOGS PROHIBITED

- (A) NO PERSON SHALL KEEP A NOISY OR VICIOUS DOG IN THE TOWN OF DIXMONT WHICH DISTURBS THE PEACE AND QUIET OF ANY PERSON.
- (B) NO PERSON SHALL KEEP ANY DOG WHICH HAS BITTEN ANY PERSON. THE ANIMAL CONTROL OFFICER (ACO) OR ANY OTHER AUTHORIZED INDIVIDUAL, FOLLOWING A COMPLAINT BY ANY PERSON THAT A VICIOUS OR NOISY DOG IS BEING KEPT WITHIN THE TOWN, SHALL CAUSE AN INVESTIGATION OF THE COMPLAINT TO BE MADE. (C) IF A VICIOUS OR NOISY DOG IS FOUND BY THE ACO OR ANY OTHER AUTHORIZED INDIVIDUAL, THEY SHALL GIVE WRITTEN NOTICE TO THE PERSON OWNING OR KEEPING SUCH DOG. SUCH NOTICE SHALL REQUIRE THAT THE DOG BE QUIETED, REMOVED FROM THE TOWN OR DESTROYED.
- (C) FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SECTION SHALL BE A VIOLATION OF THIS CODE AND SUBJECT TO A FINE OF NOT LESS THAN TWENTY FIVE DOLLARS (\$25.00) NOR MORE THAN ONE HUNDRED DOLLARS (\$100.00). SUCH FINES SHALL BE IMPOSED FOLLOWING PROCEEDINGS BEFORE A COURT OF COMPETENT JURISDICTION.

#### DOGS CONSTITUTING A NUISANCE

- (A) ACTION CONSTITUTING A NUISANCE. IT SHALL BE UNLAWFUL FOR AN OWNER OR KEEPER OF A DOG TO ALLOW SUCH DOG TO CAUSE ANNOYANCE OR DISTURBANCE TO ANY PERSONS BY FREQUENT AND HABITUAL HOWLING, YELPING, BARKING OR BY RUNNING AFTER OR CHASING PERSONS, BICYCLES, AUTOMOBILES OR OTHER VEHICLES.
- (B) IMPOUNDMENT OF NUISANCE DOGS. ANY DOG CONSTITUTING A NUISANCE AS SET OUT IN SUBSECTION (A) MAY BE IMPOUNDED BY THE ANIMAL CONTROL OFFICER (ACO) OR OTHER DULY AUTHORIZED INDIVIDUAL. IF THE OWNER CANNOT BE REASONABLY LOCATED, THE OWNER OF THE DOG SHALL PAY THE FULL COST INCURRED FOR THE BOARD AND SHELTER OF THE ANIMAL.
- (C) PENALTY. ANY OWNER VIOLATING ANY OF THE PROVISIONS OF THIS SECTION SHALL, UPON CONVICTION, BE SUBJECT TO A FINE OF NOT LESS THEN TWENTY FIVE DOLLARS (\$25.00) OR MORE THEN ONE HUNDRED DOLLARS (\$100.00).

# FLOODPLAIN MANAGEMENT ORDINANCE

FOR THE

TOWN OF DIXMONT, MAINE

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ENACTED:

\_\_\_\_\_

Date

EFFECTIVE:

\_\_\_\_\_

Date

CERTIFIED BY:

\_\_\_\_\_

Name

\_\_\_\_\_

Title

Affix Seal

# FLOODPLAIN MANAGEMENT ORDINANCE

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

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

The areas of special flood hazard are identified by the Federal Emergency Management Agency in a map entitled "Flood Insurance Rate Map - Town of Dixmont, Maine, Penobscot County," dated February 4, 1987, which is hereby adopted by reference and declared to be a part of this Ordinance.

## **ARTICLE II - PERMIT REQUIRED**

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

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

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

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



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

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

- H. The elevation in relation to the National Geodetic Vertical Datum (NGVD), or to a locally established datum, of the:
  - 1. base flood at the proposed site of all new or substantially improved structures, which in Zone A is determined:
    - a. from any base flood elevation data from federal, state, or other technical sources (such as FEMA's Quick-2 model, FEMA 265/July 1995), including information obtained pursuant to Article VI.J. and VIII.D.;
    - b. from the contour elevation extrapolated from a best fit analysis of the floodplain boundary when overlaid onto a USGS Quadrangle Map or other topographic map prepared by a Professional Land Surveyor or registered professional engineer, if the floodplain boundary has a significant correlation to the elevation contour line(s); or, in the absence of all other data,
    - c. to be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building.
- 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, 01/03, as amended), to verify that the floodproofing methods for any non-residential structures will meet the floodproofing criteria of Article III.H.4.; Article VI.G.; and other applicable standards in Article VI;
  - 2. a Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Article VI.K.2.a.;
  - 3. a certified statement that bridges will meet the standards of Article VI.L.;
  - 4. a certified statement that containment walls will meet the standards of Article VI.M.;
- L. A description of the extent to which any water course will be altered or relocated as a result of the proposed development; and,

- M. A statement of construction plans describing in detail how each applicable development standard in Article VI will be met.

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

A non-refundable application fee of \$25.00 for all minor development and \$50.00 for all new construction or substantial improvements shall be paid to the Town Clerk and a copy of a receipt for the same shall accompany the application.

An additional fee may be charged if the Code Enforcement Officer and/or Board of Appeals need 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 data contained in the "Flood Insurance Rate Map - Town of Dixmont, 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.; Article VI.J.; and Article VIII.D., in order to administer Article VI of this Ordinance; and,
  3. when the community establishes a base flood elevation in a Zone A by methods outlined in Article III.H.1., the community shall submit that data to the Maine Floodplain Management Program in the State Planning Office.
- 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 in the State Planning Office prior to any alteration or relocation of

a water course and submit copies of such notifications to the Federal Emergency Management Agency;

- F. If the application satisfies the requirements of this Ordinance, approve the issuance of one of the following Flood Hazard Development Permits based on the type of development:
1. A two part Flood Hazard Development Permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the Code Enforcement Officer with an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer or architect based on the Part I permit construction, "as built", for verifying compliance with the elevation requirements of Article VI, paragraphs F, G, or H. Following review of the Elevation Certificate data, which shall take place within 72 hours of receipt of the application, the Code Enforcement Officer shall issue Part II of the Flood Hazard Development Permit. Part II shall authorize the applicant to complete the construction project; or,
  2. A Flood Hazard Development Permit for Floodproofing of Non-Residential Structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the floodproofing standards of Article VI.G.1.,2., and 3. 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.I., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves and piers.
- G. Maintain, as a permanent record, copies of all Flood Hazard Development Permit Applications, corresponding Permits issued, and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of Article IX of this Ordinance, and copies of Elevation Certificates, Floodproofing Certificates, Certificates of Compliance and certifications of design standards required under the provisions of Articles III, VI, and VII of this Ordinance.

## **ARTICLE VI - DEVELOPMENT STANDARDS**

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

- A. **All Development** - All development shall:
1. be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
  2. use construction materials that are resistant to flood damage;
  3. use construction methods and practices that will minimize flood damage; and,

4. use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during flooding conditions.
- B. **Water Supply** - All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
- C. **Sanitary Sewage Systems** - All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.
- D. **On Site Waste Disposal Systems** - On site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.
- E. **Watercourse Carrying Capacity** - All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the watercourse.
- F. **Residential** - New construction or substantial improvement of any residential structure located within Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.; Article V.B; or Article VIII.D.
- G. **Non Residential** - New construction or substantial improvement of any non-residential structure located within Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.; Article V.B; or Article VIII.D., or together with attendant utility and sanitary facilities shall:
1. be floodproofed to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.; Article V.B; or Article VIII.D., so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;
  2. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
  3. 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.
- H. **Manufactured Homes** - New or substantially improved manufactured homes located within Zone A shall:
1. be elevated 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.; Article V.B; or Article VIII.D.;
  2. 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,
  3. 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:

- a. 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,
  - b. 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).
  - c. all components of the anchoring system described in Article VI.H.3.a.& b. shall be capable of carrying a force of 4800 pounds.
- I. **Accessory Structures** - Accessory Structures, as defined in Article XIII, located within Zone A, shall be exempt from the elevation criteria required in Article VI.F. & G. above, if all other requirements of Article VI and all the following requirements are met. Accessory Structures shall:
1. be 500 square feet or less and have a value less than \$3000;
  2. have unfinished interiors and not be used for human habitation;
  3. have hydraulic openings, as specified in Article VI.K.2., in at least two different walls of the accessory structure;
  4. be located outside the floodway;
  5. when possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and,
  6. have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Special Flood Hazard Area.
- J. **Floodways** - Encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in a floodway which, in Zone A riverine areas, is 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, 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:
1. will not increase the water surface elevation of the base flood more than one foot at any point within the community; and,
  2. is consistent with the technical criteria contained in Chapter 5 entitled "Hydraulic Analyses," *Flood Insurance Study - Guidelines and Specifications for Study Contractors*, (FEMA 37/ January 1995, as amended).
- K. **Enclosed Areas Below the Lowest Floor** - New construction or substantial improvement of any structure in Zone A that meets the development standards of Article VI, including the elevation requirements of Article VI, paragraphs F, G, or H and is elevated on posts, columns, piers, piles, "stilts," or crawlspaces may be enclosed below the base flood elevation requirements provided all the following criteria are met or exceeded:

1. Enclosed areas are not "basements" as defined in Article XIII;
  2. Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement must either:
    - a. be engineered and certified by a registered professional engineer or architect; or,
    - b. meet or exceed the following minimum criteria:
      - (1) a minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;
      - (2) the bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade; and,
      - (3) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means;
  3. The enclosed area shall not be used for human habitation; and,
  4. The enclosed areas are usable solely for building access, parking of vehicles, or storage.
- L. **Bridges** - New construction or substantial improvement of any bridge in Zone A 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 utilizing information obtained pursuant to Article III.H.1.; Article V.B; or Article VIII.D.; 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.J.; 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.
- M. **Containment Walls** - New construction or substantial improvement of any containment wall located within Zone A shall:
1. have the containment wall elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.; Article V.B.; or Article VIII.D.
  2. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and

3. 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.

N. **Wharves, Piers and Docks** - New construction or substantial improvement of wharves, piers, and docks are permitted in Zone A 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.

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

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

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

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

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

- A. All such proposals are consistent with the need to minimize flood damage.
- B. All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.
- C. Adequate drainage is provided so as to reduce exposure to flood hazards.

- D. All proposals include base flood elevations, flood boundaries, and, in a riverine floodplain, floodway data. These determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency.
- E. Any proposed development plan must include a condition of plan approval requiring that structures on any lot in the development having any portion of its land within a Special Flood hazard Area, are to be constructed in accordance with Article VI of this ordinance. Such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The condition shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the Planning Board or local reviewing authority as part of the approval process.

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

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

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

- A. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- B. Variances shall be granted only upon:
  - 1. a showing of good and sufficient cause; and,
  - 2. a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and,
  - 3. a showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances; and,
  - 4. a determination that failure to grant the variance would result in "undue hardship," which in this sub-section means:
    - a. that the land in question cannot yield a reasonable return unless a variance is granted; and,
    - b. that the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and,
    - c. that the granting of a variance will not alter the essential character of the locality; and,
    - d. that the hardship is not the result of action taken by the applicant or a prior owner.



- C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as it deems necessary.
- D. Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
  - 1. other criteria of Article IX and Article VI.J. are met; and,
  - 2. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- E. Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of Historic Structures upon the determination that:
  - 1. the development meets the criteria of Article IX, paragraphs A. through D. above; and,
  - 2. the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- F. Any applicant who meets the criteria of Article IX, paragraphs A. through E. shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:
  - 1. the issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;
  - 2. such construction below the base flood level increases risks to life and property; and,
  - 3. the applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.
- G. Appeal Procedure for Administrative and Variance Appeals
  - 1. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party within thirty days after receipt of a written decision of the Code Enforcement Officer or Planning Board.
  - 2. Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
  - 3. The Board of Appeals shall hold a public hearing on the appeal within thirty-five days of its receipt of an appeal request.
  - 4. The person filing the appeal shall have the burden of proof.
  - 5. The Board of Appeals shall decide all appeals within thirty-five days after the close of the hearing, and shall issue a written decision on all appeals.

6. The Board of Appeals shall submit to the Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.
7. Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five days from the date of any decision of the Board of Appeals.

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

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

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

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

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

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

## ARTICLE XIII - DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

In the case of Zone A, **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.K..

**Elevation Certificate** - An official form (FEMA Form 81-31, 02/06, as amended) that:

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

**Flood or Flooding** - means:

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

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

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

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

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

**Floodplain Management Regulations** - means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

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

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

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

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

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

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

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

**Lowest Floor** - means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements described in Article VI.K. of this ordinance.

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

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

**Mean Sea Level** - means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, 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.I., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves and piers.

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

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

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

**Regulatory Floodway** -

- a. means the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot, and
- b. in Zone A riverine areas, the floodway is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.

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

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

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

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

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

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

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

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

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

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

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

60.3 (b)

# TOWN OF DIXMONT MOBILE HOME PARK ORDINANCE

February 12, 2002  
Adopted March 16, 2002  
PROPOSED REVISION  
September 2014  
Revision adopted March 21, 2015



**STEPS TO GAIN APPROVAL OF NEW MOBILE HOME PARK**

1. Obtain a copy of the Subdivision and Mobile Home Park Ordinances from the Town Office.
2. Develop a sketch plan including a rough layout of the park.
3. Present the sketch plan to the Planning Board. The Planning Board will classify as a major or minor subdivision and schedule an on-site visit. The Planning Board will also identify any design problems.
4. The next step is to present the Planning Board with a preliminary plan. This step can be waived if it is a minor subdivision. At this point, the Planning Board will perform a thorough review of the plans and schedule a public hearing.
5. The last step before the Planning Board will be the presentation of the final plan and the public hearing. These usually occur at the same time.
6. After approval by the Planning Board, the applicant may begin construction of the park including the roads, driveways, foundations, and septic systems.
7. Following the completion of construction, the applicant needs to apply for a license from the Selectmen to begin operation of the park.
8. Once the applicant has applied for a license, the Code Enforcement Officer (CEO) will inspect the park to ensure that it was constructed according to the standards in the ordinance and any conditions that the Planning Board placed on the approval. The CEO will make a written report to the Selectman and they will issue a license if the park is in compliance.

**SEC. 1: GENERAL PROVISIONS**

**A. TITLE**

This Ordinance shall be known and may be cited as the "Mobile Home Park Ordinance of the Town of Dixmont, Maine," and will be referred to herein as the "Ordinance."

**B. AUTHORITY**

This Ordinance is enacted under authority granted to the Town by the constitution and the statutes of the State of Maine.

**C. PURPOSES**

The purposes of this Ordinance are:

1. To promote the public health, safety, and welfare of the citizens of the Town;
2. To protect the natural environment from unacceptable adverse impacts;
3. To integrate new development harmoniously into the Town's physical environment;
4. To promote the development of an economically sound, diverse, and stable community;
5. To establish standards for Mobile Home Park construction and maintenance;
6. To establish procedures whereby Town officials may review Mobile Home Park proposals by providing fair and reasonable standards for their evaluations and to provide a public hearing

process through which Town residents may raise questions and receive answers regarding such proposals.

**D. APPLICABILITY**

The provisions of this Ordinance shall apply to Mobile Home Parks and Mobile Home Subdivisions as defined by this Ordinance and by Title 30-A, MRSA, Section 4358 within the boundaries of the Town of Dixmont.

**E. SEPARABILITY**

In the event that any section, subsection or any provision of this Ordinance shall be declared by any court of competent jurisdiction to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, subsection or provision of this Ordinance. To this end, the provisions of this Ordinance are hereby declared to be severable.

**F. AMENDMENTS**

The procedure to be followed in initiating and securing amendments to this Ordinance is as follows:

**1. INITIATION**

A proposal to amend this Ordinance may be initiated by:

- a. The Planning Board, by majority vote;
- b. The Board of Selectmen, through a request to the Planning Board;
- c. The Public, through a written petition signed by at least fifty (50) residents registered to vote in the Town of Dixmont.

**2. REVIEW**

The process to be followed in adopting an amendment to this Ordinance is as follows:

- a. Proposed amendments must first be submitted to the Planning Board for their consideration.
- b. The Planning Board shall, within thirty (30) days of receiving a proposed amendment, set a date to hold a public hearing on the proposed amendment.
- c. Notice of the public hearing shall be posted in the Municipal Office at least fourteen (14) days before the hearing. Notice shall also be published at least once in a newspaper of general circulation. The date of the first publication must be at least seven (7) days before the hearing. This notice shall contain a brief description of the nature of the proposed amendment.
- d. After the Planning Board votes to either support or not support a proposed amendment, that proposed amendment shall be placed on the warrant for the Town Meeting following the public hearing.
- e. The Planning Board shall make its official report at the Town Meeting following the public hearing.

**3. ENACTMENT**

A majority of the votes cast at a town meeting shall be required to enact the amendment(s).

**4. EFFECTIVE DATE**

The provisions of this Ordinance and any amendments thereto shall become effective the day of their enactment.

**SEC. 2. NONCONFORMING PARKS**

**A. NONCONFORMING MOBILE HOME PARK DEFINED**

A Mobile Home Park or part thereof not in conformity with the provisions of this Ordinance or subsequent amendments hereto is declared to be a nonconforming Mobile Home Park.

**B. LAWFUL NONCONFORMING MOBILE HOME PARKS**

A Mobile Home Park in existence or under construction pursuant to Subsection D of this section at the time of the adoption of this Ordinance or subsequent amendments hereto, and which park becomes a nonconforming Mobile Home Park by the adoption of this Ordinance or subsequent amendments, or which park was a lawful nonconforming Mobile Home Park at the time of the adoption of this Ordinance or subsequent amendments hereto, becomes a lawful nonconforming Mobile Home Park.

**C. CONTINUANCE ALLOWED**

The use of lawful nonconforming Mobile Home Park may continue, unless abandoned. Abandonment will be deemed to occur if the use has been completely discontinued for 12 consecutive months.

**D. PARKS LEGALLY UNDER CONSTRUCTION NOT REQUIRED TO CHANGE PLANS**

This Ordinance shall not require a change in plans or construction of a Mobile Home Park for which Planning Board approval has been issued prior to the adoption of this Ordinance or any subsequent amendments thereto provided that the construction of said park is underway within sixty (60) calendar days after the issuance of said approval.

**E. EXPANSION PERMITTED**

Expansion of a lawful nonconforming Mobile Home Park may be permitted provided that the expanded portion of the lawful nonconforming Mobile Home Park shall conform to the provisions of this Ordinance.

**SEC. 3. ADMINISTRATION**

**A. RESPONSIBILITY ASSIGNED**

**1. CODE ENFORCEMENT OFFICER**

It shall be the responsibility of the CEO to enforce the provisions of this Ordinance and to carry out inspections as requested by the Board of Selectmen.

**2. PLANNING BOARD**

It shall be the responsibility of the Planning Board to review proposals for new Mobile Home Parks and the expansion of existing parks for compliance as subdivisions with provisions of the Town's Subdivision Ordinance and of this Ordinance.

**3. BOARD OF SELECTMEN'S RESPONSIBILITY**

It shall be the responsibility of the Board of Selectmen to approve, approve conditionally, or disapprove the Mobile Home Park licenses pursuant to the requirements of this Ordinance.

**B. PLANNING BOARD SUBDIVISION REVIEW**

**1. SUBDIVISION REVIEW AND APPROVAL REQUIRED**

The Planning Board shall review new Mobile Home Parks and expansions of existing Parks as residential subdivisions pursuant to the Town of Dixmont's Subdivision Ordinance.

**2. CONFORMANCE WITH SUBDIVISION STANDARDS REQUIRED**

New Mobile Home Parks and expansions of existing parks shall conform to the procedural design and performance standards contained in the Town's Subdivision Ordinance unless such standards are in conflict with the provisions of this Ordinance, in which case the provisions of this Ordinance shall take precedent.

**C. ANNUAL MOBILE HOME PARK LICENSE REQUIRED**

**1. LICENSE REQUIRED**

No person, firm, or corporation shall establish a new or maintain an existing Mobile Home Park within the Town without a license issued in conformity with the provisions of this Ordinance. A license must be obtained prior to installation of the first mobile home.

**2. SUBDIVISION APPROVAL REQUIRED PRIOR TO LICENSE**

Submission of evidence of Subdivision approval by the Planning Board is required with the application for a Mobile Home Park license.

**3. APPLICATION TO THE CODE ENFORCEMENT OFFICER**

Application for a license for a new Mobile Home Park and for license renewals shall be filed with the CEO who shall, in turn, present said applications, along with a written status report, to the Board of Selectmen for their action.

**4. CODE ENFORCEMENT OFFICER'S STATUS REPORT**

The CODE ENFORCEMENT OFFICER shall inspect the premises and prepare a written status report detailing the Mobile Home Park's compliance with the provisions of this Ordinance and citing any violation thereof. The CEO shall consult with the Chief of the Fire Department, the Road Commissioner, the Health Officer, and the Plumbing Inspector in the preparation of said status report.

**5. ANNUAL EXPIRATION DATE**

Each such license shall expire on the first day of June following the date of issuance. Applications for license renewal shall be submitted between the first day of January and the fifteenth day of April in order to be acted upon by the first day of June.

**6. POSTING OF LICENSE**

Such licenses shall be conspicuously posted on the premises at all times and shall not be transferable.

**D. MOBILE HOME PERMIT**

**1. MOBILE HOME PERMIT REQUIRED**

No person shall place a mobile home in a Mobile Home Park without first obtaining a mobile home permit from the CEO.

**2. PERMIT REQUIRED FOR THE REPLACEMENT OF EXISTING MOBILE HOMES**

No person shall replace existing mobile home unit in a Mobile Home Park with another unit without first obtaining a permit from the CEO. When an existing mobile home is replaced with a larger mobile home, the CEO may, upon request, alter the lot coverage and setbacks in accordance with Section 3.F of this Ordinance.

**3. DECLARATION FROM MOBILE HOME PARK OPERATOR REQUIRED**

All applications for mobile home permits shall be made to the CEO in writing and shall be accompanied by a written declaration from the Mobile Home Park operator that the site will be made available to the applicant.

**E. CERTIFICATE OF COMPLIANCE REQUIRED**

No site in a Mobile Home Park requiring approval under this Ordinance shall be conveyed, rented, leased, or occupied, nor shall any mobile home unit be placed upon such site, without a certificate of compliance issued by the CEO indicating that all of the required public improvements and infrastructure improvements serving one or more mobile home park lots have been constructed as required and all applicable conditions of approval have been met.

**F. MODIFICATION OF LOT COVERAGE AND SETBACK STANDARDS IN EXISTING PARKS**

**1. INCREASE IN LOT COVERAGE**

The CEO may allow an increase in lot coverage (including all buildings on the lot, accessory buildings and structures, open decks and parking spaces) in Mobile Home Parks existing at the time of adoption of this Ordinance of up to ten percent (10%), in approving proposed new decks and accessory structures.

Prior to allowing an increase in lot coverage, the CEO shall make a finding that:

- a. Strict conformity with the lot coverage standards will result in a deck or accessory structure that is so small or irregular in shape that it would be substantially unusable or impractical and
- b. His/her determination that compliance would result in a deck or accessory structure substantially unusable or impractical is based upon the reasonable person standard.
- c. The Board of Appeals (BOA) may review a denial of a request to increase lot coverage by the CEO. However, the BOA must abide by the standards set forth in sections F.1, subsection F.1.a and F.1.b above.

- d. The BOA may grant a variance to lot coverage and setback requirements to a property owner of a Mobile Home Park for the purpose of making that property accessible to a person with a disability living on the property. The BOA shall restrict any variance granted under this subsection solely due to the installation of equipment or the construction of structures necessary for access to or egress from the property by the person with the disability. The BOA may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives on the property. For purposes of this subsection, a disability has the same meaning as a physical or mental disability under MRSA Title 5, Section 4553.

## G. VIOLATIONS AND ENFORCEMENT

### 1. VIOLATIONS CONSIDERED NUISANCES

Any condition existing in violation of this Ordinance is considered a nuisance.

### 2. ENFORCEMENT

The CEO, with the advice and consent of the Board of Selectmen, is authorized to institute or cause to be instituted by the Town Attorney, in the name of the Town of Dixmont, any and all actions, legal or equitable that may be appropriate or necessary for the enforcement of this Ordinance.

### 3. VIOLATIONS MAY RESULT IN LICENSE REVOCATION

The CEO is hereby authorized to give written notice of violations, the nature of the violation, and time to correct the violation. Failure to comply may result in revocation of any license issued pursuant to the terms of this Ordinance if after due investigation is determined that the holder thereof has violated any of the provisions of this Ordinance or any other applicable code, law, or statute. The licensee has thirty (30) days from receipt of notification by the CEO to comply or appeal.

### 4. PENALTIES

Any person, firm, or corporation being the owner or operator of, or having control or use of any mobile home, mobile home lot, Mobile Home Park, who violates the provisions of this ordinance shall be guilty of a civil violation and subject to the penalties provided in Title 30-A, MRSA, Section 4452. Monetary penalties may be assessed on a per day basis and shall be treated as civil penalties.

## H. APPEALS

### 1. APPEALS FROM CODE ENFORCEMENT OFFICER/PLANNING BOARD DECISIONS

An appeal may be taken within thirty (30) days after the Planning Board or CEO renders any decision, by any party to the Board of Appeals in accordance with State law.

### 2. APPEALS FROM BOARD OF APPEALS DECISIONS

An appeal may be taken within thirty (30) days after the Board of Appeals renders any decision, by any party to Superior Court in accordance with State law.

## I. FEE SCHEDULE

The following fee schedule shall be in effect for the approvals, permits, and certificates required under this Ordinance:

**1. SUBDIVISION REVIEW FEES**

The fee for the Planning Board's review of the plans for new Mobile Home Parks and for the expansion of existing Mobile Home Parks shall be as provided in the Dixmont Subdivision Ordinance.

**2. ANNUAL MOBILE HOME PARK LICENSE FEE**

The fee for a Mobile Home-Park license issued by the Board of Selectmen shall be seventy-five (\$75.00) dollars per approved lot.

**3. MOBILE HOME PERMIT FEE**

The fee for a mobile home permit issued by the CEO, pursuant to Section 3.D of this Ordinance, is seventy-five (\$75.00) dollars.

**SEC. 4. DESIGN AND PERFORMANCE STANDARDS**

**A. COMPLIANCE WITH LAWS AND ORDINANCES**

Except as stipulated below, Mobile Home Parks shall comply with the design and performance provisions of all applicable state laws and municipal ordinances and shall meet the requirements of the Dixmont Subdivision Ordinance.

**B. OVERALL PARK DENSITY**

The overall density of a Mobile Home Park served by a central subsurface sewage disposal system shall be no greater than one unit per 20,000 square feet of total park area.

**C. MINIMUM LOT SIZE AND WIDTHS**

Lots in a Mobile Home Park shall meet the following lot size and width requirements:

**1. Lots served by individual subsurface sewage disposal system:**

Minimum lot area: 20,000 square feet

Minimum lot width: 100 feet

**2. Lots served by a central subsurface wastewater disposal system:**

Minimum lot area: 12,000 square feet

Minimum lot width: 75 feet

**D. MINIMUM LOT SETBACKS**

In placing mobile homes on their respective lots, the following requirements shall be met:

**1. The following lot setbacks shall apply to all homes and accessory buildings:**

Front setback: 20 feet

Side setbacks: 20 feet

Back setback: 10 feet

If a lot is on a public road, the setback shall conform with the residential setback requirements applicable to residential dwelling units.

**E. LOT COVERAGE**

All buildings on the lot, including accessory buildings and structures, open decks and parking spaces, shall not cover more than 50% of the lot area.

**F. PERMANENT FOUNDATION REQUIRED**

Any mobile home units within the park used as dwelling units shall be installed on concrete foundation, designed according to specifications of the Mobile Home Installation Standard, State of Maine Department of Professional and Financial Regulation, Manufactured Housing Board.

G. Any mobile home within the park shall have a pitched roof covered with fire resistant material.

**H. BUFFER STRIPS**

1. A fifty (50) foot wide buffer strip shall be provided along all property boundaries that:
  - a. Abut residential land which has a gross density of less than half of that proposed in the park, or
  - b. Abut residential land that is zoned at a density of less than half of that proposed in the park.
2. No structures, streets, or utilities may be placed in the buffer strip, except that utilities only may cross a buffer strip to provide services to the park.
3. Within twenty-five (25) feet of any property line and within the buffer strip, visual screening and /or landscaping shall be provided. The visual screening may consist of fences, berms, landscaping (such as coniferous shrubs and trees) and/or natural existing vegetation. This screening shall meet the screening requirements set forth by the planning board and shall be maintained throughout the life of the mobile home park. The screening shall effectively screen at least 80% of the buildings from the view of the adjacent properties. If vegetative screening is chosen, the park owner has within one year of approval to plant vegetative screening and must comply with the above standard within a duration set forth by the Planning Board not to exceed 5 years.

**I. ROAD STANDARDS**

**1. OWNERSHIP, DESIGN, AND MAINTENANCE**

- a. All roads within the Mobile Home Park shall be owned, constructed, maintained, and serviced by the Mobile Home Park owner.
- b. All roads within the Mobile Home Park shall be designed by a Professional Engineer, licensed in the State of Maine, and shall be designed, constructed, and maintained according to the current edition of "The Standard Specifications for Highways and Bridges of the Maine Department of Transportation", except that such specifications shall not be more restrictive than those developed by the Manufactured Housing Board pursuant to Title 30-



A, MRSA, Section 4358 (3), (G), and (H) and the Manufactured Housing Board's road construction regulations contained in C.M.R. 02-385, Chapter 850, Appendix C..

## 2. INTERSECTIONS

Mobile Home Park roads that intersect with public roads shall meet the following standards:

- a. The desired angle of intersection shall be 90 degrees. The minimum angle of intersection shall be 75 degrees.
- b. The maximum permissible grade within 75 feet of intersection shall be 2%.
- c. The minimum sight distance shall be 10 feet times the posted speed limit on the existing road. Example: 45 mph would require 450 foot sight distance.

Sight distances shall be measured from the driver's seat of a vehicle that is 10 feet behind the curb or edge of shoulder line with the height of the eye 3-1/2 feet above the pavement and the height of object 4-1/2 feet. Where necessary, the park land bordering the intersection shall be cleared of all growth and sight obstructions to achieve the required visibility.

- d. The centerline of any street within a park intersecting an existing public street shall be at least 125 feet from the centerline of any other street intersecting that public street.

## 3. ACCESS AND CIRCULATION

- a. Primary access to the Mobile Home Park must be from a Town or State road or a private road built and maintained to applicable Maine Department of Transportation standards.
- b. For Mobile Home Parks, consisting of 40 or more units, there shall be at least two entrances from public streets or roads.
- c. On-street parking is only permitted on one side of the street.
- d. No mobile home lot may have vehicular access directly onto a town road or state highway.
- e. A traffic impact analysis prepared by a Professional Engineer, licensed in the State of Maine shall be required if the park consists of 40 or more units.

## 4. RIGHT-OF-WAY AND SURFACE WIDTH

- a. Two-way park roads shall have a minimum right-of-way of 23 feet and a minimum traveled surface of 20 feet.
- b. One-way streets shall have a minimum right-of-way of 18 feet and a minimum traveled surface of 14 feet. On-street parking shall be prohibited.
- c. Parking lanes shall be a minimum of 8 feet in width, if provided.
- d. Cul-de-sac turnarounds shall have minimum radii of 90 feet at the outer edge of the roadway, exclusive of any parking areas.

## J. PARKING REQUIREMENTS

### 1. OCCUPANT PARKING

For each mobile home lot there shall be provided and maintained at least two (2) off- street parking spaces. Each parking space shall contain a minimum area of one hundred sixty-two (162) square feet, not including maneuvering area, with minimum dimensions of nine (9) feet by eighteen (18) feet. This requirement may be waived if a parking lane provides an equivalent number of spaces.

**2. GUEST PARKING**

In addition to occupant parking, off-street guest and services parking shall be provided within the boundaries of the park at a ratio of one (1) space for each four (4) mobile home lots. Such parking spaces shall be reserved for the sole use of park residents' guests. This requirement shall be waived if additional sources of off street parking results in a total ratio of 2.25 spaces per unit.

**K. LIGHTING**

Outdoor lighting shall be provided to adequately illuminate entrances, exits, and common facilities. Lights shall be sized and directed to avoid adverse impact on adjacent properties.

**L. SIGNS**

One identifying sign is permissible at each entrance of the Mobile Home Park no larger than 32 square feet that may be indirectly lit, but not flashing. The style and location of the identifying sign shall not interfere with vehicle sight distance and shall be constructed in accordance with the local sign regulations.

**M. STORAGE**

**1. FUEL SUPPLY AND STORAGE**

- a. Natural gas and liquefied petroleum gas systems shall comply with all applicable codes and regulations. Installation of systems shall be subject to inspection and approval by the CEO.
- b. All fuel oil supply systems shall be constructed and installed in each mobile home lot in accordance with all applicable codes and regulations. Installation of the system shall be subject to inspection and approval of the CEO.

**2. REFUSE STORAGE**

Storage of refuse shall be accomplished in such a manner as to minimize: health hazards, rodent harborage, insect breeding areas, accident, wild fire, obnoxious odors, air pollution, and access to domestic or wild animals.

**N. ACCESSORY STRUCTURES/ATTACHED STRUCTURES**

- 1. Accessory structures may be allowed upon Mobile Home Park lots provided each shall:
  - a. Be located at least twenty (20) feet from the street right-of-way, ten (10) feet from the rear lot lines, and at least twenty (20) feet from a side lot line.
  - b. Not obstruct required openings for light and ventilation of the mobile homes nor prevent inspection of any mobile home equipment or utility connection.

2. A Building Permit under the Land Use Ordinance may be issued by the CEO for extensions to mobile homes, such as porches and decks, provided that all extensions shall meet the lot setback and lot coverage provisions of this Ordinance.
3. No storage facility, accessory structure, or extension, such as a porch or deck shall be placed or constructed upon a mobile home lot in a Mobile Home Park, without first obtaining a Building Permit under the Land Use Ordinance from the CEO.

**O. UTILITY REQUIREMENTS**

All Mobile Home Parks shall provide permanent electrical, water and sewage disposal connections to each mobile home in accordance with applicable state and local rules and regulations, and as follows:

**1. WATER SUPPLY**

- a. Each mobile home shall be provided with an adequate, safe, potable water supply.
- b. The water supply shall provide a minimum of two hundred (200) gallons of water per day per mobile home with a minimum of twenty (20) pounds of pressure at all times.
- c. Water supply systems shall be installed and maintained by the Mobile Home Park operator in accordance with applicable provisions of the State of Maine Plumbing Code, and all revisions in effect at that time.

**2. SANITARY SEWAGE DISPOSAL**

- a. Individual Sanitary Sewer Systems shall comply with the applicable provisions of the Maine State Plumbing Code, in effect at the time such system is proposed.
- b. When a centralized sanitary sewer system and treatment facility is installed, it shall be designed and installed under the supervision of a Professional Engineer, licensed in the State of Maine.
- c. The owner and operator of a Mobile Home Park is/are responsible for the proper construction and maintenance of a sanitary sewer system within the Mobile Home Park.

**3. ELECTRIC SUPPLY**

- a. A Mobile Home Park shall contain an electrical system designed, installed, and maintained in accordance with applicable state and local regulations.
- b. The electrical system shall be designed and installed under the supervision of a Professional Engineer, licensed in the State of Maine or licensed Master Electrician.

**P. COMMON RECREATION FACILITIES**

No less than five percent (5%) of the total area of any Mobile Home Park established under this Ordinance shall be devoted to common recreational areas and facilities, such as undeveloped areas, playgrounds, swimming pools, community buildings, ways for pedestrians and cyclists away from streets, and play areas for small children or other recreational areas in block interiors. Common recreational areas shall not include streets or parking areas, shall be closed to automotive traffic except for maintenance and service vehicles, and shall be improved and maintained for the uses intended.

**Q. FIRE PROTECTION**

The applicant shall construct water storage structures with dry hydrants for firefighting purposes of a type, design, and capacity acceptable to the Fire Chief. The applicant shall maintain year-round access to the structures. An easement shall be granted to the Town granting access to the hydrants where necessary. The Planning Board may waive the requirement for water storage structures only upon the submittal of evidence by the Dixmont Fire Department, in writing, that a nearby water supply is deemed available and adequate for firefighting purposes.

**SEC. 5. MANAGEMENT STANDARDS**

**A. PARK OCCUPANTS REGISTER REQUIRED**

The Mobile Home Park owner shall maintain a register containing the names and lot numbers of the Mobile Home Park occupants. The register shall be available for inspection by state and local authorities upon request during normal business hours.

**B. LOT IDENTIFICATION**

**1. LOT NUMBERS REQUIRED**

Each mobile home lot shall have a number supplied by the owner of the Mobile Home Park, and the lots shall be numbered consistent with the 911 E Permanent Addressing Ordinance.

**2. UNIT NUMBERS REQUIRED**

Each mobile home shall be numbered in a manner consistent with the number assigned to the lot.

**3. SIZE**

The mobile home lot number shall be at least three (3) inches high.

**4. VISIBILITY**

The mobile home lot number shall be prominently displayed upon the mobile home.

**C. STREET NAMES AND SIGNS**

**1. NAMES TO DIFFER FROM EXISTING NAMES**

Proposed street names shall be substantially different from existing street names so as not to be confused in sound or spelling.

**2. NAMES REQUIRED**

Streets shall have names rather than numbers or letters.

**3. LOCATION AND DESIGN**

Street name signs shall be erected and maintained at all street/road intersections. Lettering shall be at least four (4) inches high and in a readily readable typeface. Conventional abbreviations are acceptable except for the street name itself. The street name sign should be reflectorized and shall have dark background with white lettering.

**D. PARK OWNER RESPONSIBLE FOR UTILITY CONNECTIONS**

The Mobile Home Park owner shall be responsible to ensure that all the connection of utilities to each mobile home unit is both safe and made according to law.

**E. REFUSE COLLECTION**

Collection of refuse shall be conducted at least weekly. Collection and disposal of refuse shall be the responsibility of the Mobile Home Park operator and shall be accomplished according to state and local regulations.

**F. CERTAIN UNITS PROHIBITED IN MOBILE HOME PARKS**

Occupied units in Mobile Home Parks in the Town of Dixmont are limited to mobile homes, as defined herein. Modular homes, site-built homes, panelized homes, recreation vehicles, travel trailers, or units not suitable for year-round occupancy are not permitted.

**G. CERTIFICATE REQUIRED BEFORE UNIT REMOVAL**

Any mobile home shall not be removed from a lot until a written certificate is obtained from the tax collector of the Town of Dixmont identifying the mobile home and stating that all property taxes applicable to the mobile home, including those for the current tax year, have been paid or that the mobile home is exempt from such taxation.

**H. LOCATION OF PARKS LIMITED BY LAND USE AND SHORELAND ORDINANCES**

Mobile Home Parks shall only be allowed in those areas specified in the Land Use Ordinance of the Town of Dixmont, Maine.

**I. ACCESSORY STRUCTURES REQUIRE BUILDING PERMIT**

Accessory structures shall not be established upon a mobile home lot without a building permit issued by the CEO of the Town of Dixmont.

**J. FIRE PROTECTION**

A Mobile Home Park shall comply with State and local fire regulations.

**K. MAILBOXES**

The Mobile Home Park operator shall supply mailboxes for the residents in a place, number, and manner satisfactory to the U.S. Post Office.

**L. RUINED UNITS TO BE REMOVED WITHIN 30 DAYS**

Units or accessory structures rendered uninhabitable by fire or other causes shall be removed within thirty (30) consecutive calendar days from the time of their destruction, unless a building permit to repair or reconstruct the unit or structure has been obtained from the CEO within that time. If a building permit is so obtained, the unit or structure must be repaired or reconstructed to its prior state or better within sixty (60) days of the issuance or removed at the expiration of that time.

**M. PLACEMENT OF BOTTLED GAS TANKS**

Bottled gas tanks shall not be placed such that they face a street or road.

**N. CONVERSION OF PARK**

No individual lot in a Mobile Home Park may be sold or conveyed unless said lot meets or exceeds the minimum lot size requirement of the district in which it is located.

**O. PARK ADMINISTRATION**

The owner, developer, or operator of a Mobile Home Park shall be responsible for ensuring the maintenance of all park-owned structures and their sites. Park management shall conform to state laws. Compliance with this Ordinance shall not exempt the park owner, developer, or operator from complying with other applicable local ordinances, state statutes, and federal rules.

**SECTION VI: DEFINITIONS**

**A. CONSTRUCTION OF LANGUAGE**

In this Ordinance, certain terms and works shall be interpreted as follows:

1. The words "person" and "applicant" includes individuals, firms, associations, corporations, organizations, and similar entities.
2. Words used or defined in one tense or form shall include other tenses or derivative forms.
3. Words in the singular shall include the plural number and words in the plural shall include the singular number.
4. The masculine gender shall include the feminine and the feminine shall include the masculine.
5. The word "shall" is mandatory.
6. The word "may" is permissive.
7. In case of difference of meaning or implication between the text of this Ordinance and any map, illustrations, or table, the text shall control.

**B. DEFINITIONS**

For the purpose of interpreting this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein:

1. **ACCESSORY STRUCTURE:** A structure incidental and subordinate to the principal structure.
2. **BUILDING:** Any structure, either temporary or permanent, having a roof, awning, or other covering, containing three (3) or more enclosed sides, and designed or used for the shelter or enclosure of any person, animal, or property of any kind.
3. **CODE ENFORCEMENT OFFICER (CEO):** A person appointed by the Board of Selectmen to administer and enforce Town Ordinances. Reference to the CEO shall include Building Inspector, Plumbing Inspector, Electrical Inspector and the like, if applicable. In the absence of any officially hired state certified CEO, it shall be the responsibility of the Chairman of the Planning Board to enforce the provisions of this Ordinance.
4. **LICENSEE:** The owner of the Mobile Home Park or the applicant for a Mobile Home Park license. These terms (applicant, owner, licensee) are interchangeable unless the text indicates otherwise.
5. **LICENSING AUTHORITY:** The Board of Selectmen of the Town of Dixmont.

6. **MANUFACTURED HOUSING:** A structure or structural unit or units designed for occupancy and constructed in a manufacturing facility and transported, by the use of its own chassis or an independent chassis, to a building site. The term includes any type of building which is constructed at a manufacturing facility and transported to a building site where it is used for housing and may be purchased or sold by a dealer in the interim. Two types of manufactured housing are included under this definition:
  - a. **Mobile Homes:** Those units constructed after June 15, 1976 which the manufacturer certifies are constructed in compliance with the United States Department of Housing and Urban Development standards, meaning structures transportable in one or more sections, which, in the traveling mode are 14 body feet or more in width and are 750 or more square feet, and which are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities, including the plumbing, heating, air-conditioning, or electrical systems contained in the unit; except that the term shall include any structure which meets all the requirements of this paragraph, except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, United State Code, Title 42, Section 5401, et seq.; and
  - b. **Modular Homes:** Those units which the manufacturer certifies are constructed in compliance with the Maine's Manufactured Housing Act and regulations, meaning structures transportable in one or more sections, which are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities, including the plumbing, heating, air-conditioning, or electrical systems contained therein.
7. **MOBILE HOME PARK LOT:** An area of land in a Mobile Home Park used for installation of a mobile home and the exclusive use of its occupants.
8. **MOBILE HOME PARK:** A parcel of land under unified ownership approved by the Town for the placement of three (3) or more manufactured homes.
9. **MOBILE HOME PARK SUBDIVISION OR DEVELOPMENT:** A parcel of land approved by the Planning Board under the Dixmont Subdivision Ordinance and Title 30-A, MRSA, Section 4401 et seq. for the placement of manufactured houses on individually owned lots.
10. **PERMANENT FOUNDATION:** A permanent foundation includes any of the following:
  - a. A full, poured concrete or masonry foundation;
  - b. A poured concrete frost wall or a mortared masonry frost wall, with or without a concrete floor;
  - c. A reinforced, floating concrete pad;

11. **RECREATIONAL VEHICLE:** A vehicle or vehicular attachment designed for human temporary living quarters for one or more persons, such as a pick-up camper, travel trailer, tent trailer, or motor home.
12. **CENTRAL WASTEWATER DISPOSAL SYSTEM:** Is a disposal system that serves two or more mobile homes and is not wholly or partially on any lot.



TOWN OF DIXMONT

ORDINANCE CONTROLLING NUDITY IN BUSINESS

Section 1. Purpose. The purpose of this Ordinance is to regulate nudity as a form of commercial exploitation and to regulate dress as a form of conduct, and not to impede the free exchange and expression of ideas. The conduct regulated is that which the community and Board of Selectmen have clearly found to be offensive to the general welfare, public safety, order and morals of the Town of Dixmont and its citizens.

Section 2. Definitions. For the purpose of this Ordinance, the following definitions apply

- A. Business: Any activity engaged in or caused to be engaged in by any person or persons, natural or corporate, with the object and purpose of economic gain, benefit or advantage, either direct or indirect.
- B. Expose: Unclothed or uncostumed or not covered by a fully opaque material.
- C. Sales Person, Waiter, Waitress and Entertainer: A person shall be deemed a sales person, waiter, waitress or entertainer if such person acts in that capacity without regard to whether or not such person is paid any compensation by the owner or management of the establishment in which the activity is performed.
- D. Theatre: (1) a building, playhouse, hall, or other place having a permanent stage upon which movable scenery and theatrical or vaudeville or similar performances are given and permanently affixed seats are so arranged that a body of spectators can have an unobstructed view of the stage, or (2) a building, room, hall, or other place whose primary function is to present movies or motion pictures and which has a permanent movie screen and permanently affixed seats so arranged that a body of spectators have an unobstructed view of said screen, or (3) an open-air or "drive-in" movie having a permanently affixed movie screen and permanently affixed devices for broadcasting the soundtracks of movies or motion pictures inside of the patrons' vehicles.

Section 3. Prohibitions.

- A.: It shall be unlawful for a person who, while acting as a sales person, waiter, waitress, entertainer or in any other capacity as an owner, manager, employee, or independent contractor in a business conducted and/or operated within the Town of Dixmont: (1) to expose his

or her genitals, pubic hair, buttocks, perineum, or anus; (2) to expose any portion of the female breast at or below the areola thereof; or (3) to display covered male genitals in a discernibly turgid state.

- B. It shall be unlawful for a person to cause, permit, procure, counsel, or assist any person to expose and/or display himself or herself as prohibited by Section 3(A) of this Ordinance.

Section 4. Exceptions. This Ordinance does not apply to:

- A. A theater or similar establishment which is primarily devoted to theatrical performances or the presentation of movies.
- B. Any act authorized or prohibited by any statute of the State of Maine.

Section 5. Penalties and Enforcement. The violation of any provision of this Ordinance shall be punishable by a civil penalty of not less than \$500.00 nor more than \$1,000.00 for each offense. Each act of violation and every day upon which any violation shall occur shall constitute a separate offense. Any penalties shall inure to the benefit of the Town. In addition to such penalties, the Town may enjoin or abate any violation of this Ordinance by appropriate action. If the Town prevails in an action to enforce this Ordinance, or an action to enjoin or abate any activity prohibited by this Ordinance, the Town shall be awarded its costs of suit, including reasonable expert fees, attorney fees, and investigative costs.

Section 6. Severability. If any section, phrase, sentence, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

## OUTDOOR FESTIVAL ORDINANCE

Whereas, the inhabitants of the Town of Dixmont are deeply concerned about the tremendous crowds which have attended outdoor pageants, amusement shows, theatrical performances, including music festivals and exhibitions, in various parts of the United States and the results thereof, and

Whereas, said events have led to serious problems in the way of inadequate toilet, waste disposal, potable water, and first aid facilities, obstructions and damages to roads and highways, violations of liquor and drug laws, and destruction of both public and private property.

Now, therefore, the following ordinance is passed in the interest of promoting the general welfare, preventing disease, promoting health and providing for the public safety.

1. No person shall exhibit, sponsor, hold, promote or operate any pageant, amusement show, theatrical performance, including a music festival or exhibition, which in excess of five hundred (500) people are reasonably anticipated to attend and where a substantial portion of the entertainers of persons attending will be out of doors without first procuring from the municipal officers a license therefore at least seven (7) days prior to the event and payment of the sum of five hundred dollars (\$500) to the town therefore.
  - A. Municipal officers must have written verification that the landowner has agreed to the event.
  - B. Every abutting landowner must sign-off that they have been notified and agree to the event.
  - C. The event must describe the time limits; number of days and/or number of hours.
  - D. The applicant must provide adequate policing for the event.
2. No license shall be granted by the municipal officers unless the applicant satisfies the municipal officers that the following facilities will be available for such event in the area to be used and no such person shall hold such an event unless such facilities are available:
  - A. There must be enough potable water on premise for each person for each day in the amount of 6 16oz bottles.
  - B. A portable toilet facility shall be available for every 35 persons in attendance or expected to be in attendance.

- C. At each toilet facility there shall be filled hand sanitizers. Additional hand sanitizer dispensers shall be made available throughout the venue.
  - D. Adequate metal, wood or plastic containers with a height of at least two (2) feet and diameter or at least two (2) feet shall be spaced in the area to take care of solid waste and garbage, with at least one container for each reasonably anticipated one hundred (100) persons. Within twenty-four (24) hours after the close of the event such waste material shall be removed to a public transfer station. Returnable bottles and cans shall have a separate marked container for recycling.
  - E. A first aid facility shall be provided on the grounds with at least one ambulance in attendance with medical staff as appropriate to be determined during contract negotiations.
  - F. Off the street parking facilities shall be furnished with at least one car space with adequate access ways for each six (6) persons reasonably expected to attend. A uniformed police officer or constable shall be provided to direct traffic to and from public ways with at least one officer for each reasonably expected five hundred (500) persons.
  - G. Prior to the issuance of the license and the holding of the event, the applicant shall furnish a corporate surety bond from a company authorized to do business in Maine insuring that forthwith after the event the grounds will be cleaned of waste, and damages to public or private property in the area arising out of or in connection with the event are promptly paid, such bond to be in the amount of five thousand dollars (\$5,000) for each reasonably expected one thousand (1000) persons in attendance.
  - H. The applicant shall file with his application adequate proof that he has authority from any landowner to use his property and shall furnish a plan showing the size of the area to be used, with designated locations for drinking, toilet and washing facilities, waste containers, first aid facilities and off the street parking.
3. Each part of this ordinance is severable and if any phrase, clause, sentence or provision is declared to be contrary to law, the validity of the remainder shall not be affected thereby.
  4. Any person, directly or indirectly, exhibiting, promoting, sponsoring, operating or holding such event as owner, lessor, lessee, landlord, tenant, operator or entertainer and not complying with this ordinance shall be liable to a fine of one hundred dollars (\$100) per day for each infraction, shall be personally responsible for damages to public and/or private property arising

out of or in connection therewith and subject to any civil or injunctive relief that may be reasonable and proper.

5. The event must adhere to all applicable drug, alcohol and tobacco use policies for public events.
6. This ordinance shall take effect upon passage.

Adopted: May 12, 1970

Amendment Adopted: March 17, 2015

Ordinance Prohibiting Retail Marijuana Establishments and Retail Marijuana Social Clubs

in the Municipality of Dixmont

*Officially enacted March 17, 2018*

**Section 1. Authority.**

This ordinance is enacted pursuant to the Marijuana Legalization Act, 7 M.R.S.A. c. 417; and Municipal Home Rule Authority, Me. Const., art. VIII, pt. 2; and 30-A M.R.S.A. § 3001.

**Section 2. Definitions.**

For purposes of this ordinance, retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities and retail marijuana testing facilities, and retail marijuana social clubs are defined as set forth in 7 M.R.S.A. § 2442.

**Section 3. Prohibition on Retail Marijuana Establishments and Retail Marijuana Social Clubs.**

Retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities, and retail marijuana testing facilities, and retail marijuana social clubs, are expressly prohibited in this municipality.

No person or organization shall develop or operate a business that engages in retail or wholesale sales of a retail marijuana product, as defined by 7 M.R.S.A. § 2442.

Nothing in this ordinance is intended to prohibit any lawful use, possession or conduct pursuant to the Maine Medical Use of Marijuana Act, 22 M.R.S.A. c. 558-C.

**Section 4. Effective date; duration.**

This ordinance shall take effect immediately upon enactment by the municipal legislative body unless otherwise provided and shall remain in effect until it is amended or repealed.

**Section 5. Penalties.**

This ordinance shall be enforced by the municipal officers or their designee. Violations of this ordinance shall be subject to the enforcement and penalty provisions of 30-A M.R.S.A. § 4452.

# **Town of Dixmont**

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

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### **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 Dixmont 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 MaineDOT 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 MaineDOT 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.

# Maine Department of Transportation

## RULES AND REGULATIONS RESTRICTING HEAVY LOADS ON CLOSED WAYS

SUMMARY: The following rules and regulations restrict heavy loads on posted State and State Aid Highways from November 15 to June 1, pursuant to the Department's authority under Title 29-A M.R.S.A., Section 2395.

### 1. DEFINITIONS

- A. The definitions contained in Title 29-A, Section 101 of the Maine Revised Statutes Annotated shall govern the construction of the words contained in this regulation.
- B. Gross weight is the combined weight of the vehicle and its load.
- C. Special Mobile Equipment. "Special Mobile Equipment" shall mean every self-propelled vehicle not designed or used primarily for the transportation of persons or property but which is operated over the highways, including road construction or maintenance machinery, ditch-digging apparatus, stone crushers, air compressors, power shovels, cranes, graders, rollers, trucks used only as snowplows and for carrying sand for ballast only, well drillers and wood-sawing equipment used for hire. This enumeration shall be deemed partial and shall not operate to exclude other such vehicles which are within the general terms of this section.

### 2. DESIGNATED CLOSED WAYS

In order to prevent excessive damage to State and State-Aid Highways, the Director of Bureau of Maintenance and Operations or the Region Manager in whose Region the highway lies may close all or part of a highway to heavy vehicles during any time from November 15 to June 1. No vehicles shall travel over closed ways except those permitted by this regulation.

### 3. NOTICE

Notice shall be given by erecting at each end of the closed highway a poster indicating the following: (1) the date of the posting, (2) a description of the highway closed, (3) a summary of the vehicles exempt from the closing, (4) the name of the Region Manager, and (5) statutory and regulatory references.

### 4. EXEMPTION - FROZEN HIGHWAYS

This regulation shall not apply to any closed highway which is solidly frozen. The highway is considered "solidly frozen" only when the air temperature is 32 degrees Fahrenheit or below and no water is showing in the cracks of the road. Both conditions must be met.

## **5. EXEMPT VEHICLES**

The following vehicles are exempt from this regulation:

- A. Any vehicle or combination of vehicles registered for a gross weight of 23,000 pounds or less.
- B. Any vehicle or combination of vehicles registered for a gross weight in excess of 23,000 pounds and traveling without a load other than tools or equipment necessary for the proper operation of the vehicle. This exemption does not apply to special mobile equipment. It shall be a defense to a violation of this sub-section if the combined weight of any vehicle or combination of vehicles registered for a gross weight in excess of 23,000 pounds and its load is in fact less than 23,000 pounds.
- C. Maine Department of Transportation highway maintenance vehicles or vehicles under the direction of a public jurisdiction with permission of the Department engaged in emergency maintenance of public highways or appurtenances thereto.
- D. Passenger cars, pickup trucks, emergency vehicles, school buses, a wrecker towing a disabled vehicle of legal weight from a posted highway, and vehicles with three axles or less under the direction of a public utility and engaged in plant maintenance or repair.
- E. Any vehicle transporting home heating fuel (oil, gas, coal, stove size wood) to a private consumer, gasoline, groceries, bulk milk, bulk feed, solid waste, rubbish, or medical gases may apply for an exemption certificate (Attachment A). These vehicles must be registered in excess of 23,000 pounds and must be carrying a partial load with a weight equal to or less than that indicated on an exemption certificate issued by the Maine Department of Transportation (Attachment B). This certificate shall accompany the vehicle at all times as shall weigh slips, delivery slips, or bills of lading for the load being carried. The allowable weight indicated on the exemption certificate will be based on weights listed in the table in Attachment C. Applicants for exemption certificates must present a certified weigh slip for the empty weight of the unloaded vehicle as a prerequisite to obtaining an exemption certificate.
- F. Any combination vehicle of five axles or more weighing 80,000 pounds gross or less hauling perishable products. A permit issued by the Department of Transportation shall accompany any load of perishable products. (See Attachment D).
- G. Region Managers, at their discretion and in extraordinary circumstances, may allow heavy loads over posted roadways involving singular, nonrecurring moves. Such permission shall be made in writing and shall accompany the vehicle at all times.

## **6. PROCEDURES FOR OBTAINING AND USING TRIP TICKETS FOR HAULING PERISHABLE PRODUCTS OVER SEASONALLY POSTED ROADS**

- A. It is now possible for a shipper to haul perishable products over seasonally closed ways by securing a permit from the Maine Department of Transportation at any one of MaineDOT's five Region Offices.

- B. The permit issued will be in the form of individual pre-numbered trip tickets for hauling of perishable products by 5 axle or more combination vehicles and will be limited to a combined weight of 80,000 lbs. and may, on occasion, be further limited by time, route, and temperature.
- C. These trip tickets for hauling perishable products over seasonally closed ways will cost \$5.00 each. (Checks payable to Treasurer, State of Maine). These trip tickets will consist of three copies each with the following distribution: (1) original copy (white) – for driver, (2) second copy (green) - to be returned immediately to the Maine Department of Transportation, and (3) third copy (pink) - to be retained by the shipper.
- D. The shipper or shipper’s agent will call the appropriate Region Office and complete his/her form simultaneously with, and under guidance of the Permit Clerk. The customer is to have all the information that is required on the trip ticket before he/she makes the call. Trip tickets are to be made out in ink.
- E. After routing check and verification, the customer will be given a permit number which must be entered on the form in order to make it valid for law enforcement purposes. When the required information is entered and the call is completed, the permit is issued and the move may be made. The original trip ticket must accompany the load.
- F. Each time a trip ticket is filled out, the green copy must be mailed immediately to the Maine Department of Transportation.
- G. MaineDOT clerks will be available to take information for these trip tickets between the hours of 7:30 A.M. and 4:30 P.M., Monday through Friday at the appropriate Region Office.
- H. Additional trip tickets will not be issued to shippers in continual violation of any of the required procedures.
- I. The Department will retain the right to close any posted road to the hauling of perishable products in extreme circumstances.

EFFECTIVE DATE:

SIGNED \_\_\_\_\_

, COMMISSIONER

MAINE DEPARTMENT OF TRANSPORTATION

Section 5 D amended on March 4, 1998, to include wreckers towing vehicles.

Subsection D is amended to read: “Passenger cars, pickup trucks, emergency vehicles, school buses, a wrecker towing a disabled vehicle of legal weight from a posted highway and vehicles with three axles or less under the direction of a public utility and engaged in plant maintenance and repair.

# TOWN OF DIXMONT

## SITE PLAN REVIEW ORDINANCE

February 12, 2002

Adopted March 16, 2002

PROPOSED REVISION January 14, 2014

Revision adopted March 15, 2014

**SEC. 1. PURPOSE**

The site plan review provisions set forth in this ordinance are intended to protect the public health and safety, promote the general welfare of the community, and conserve the environment by assuring that nonresidential and multifamily construction is designed and developed in a manner which assures that adequate provisions are made for traffic safety and access; emergency access; water supply; sewage disposal; management of stormwater, erosion, and sedimentation; protection of the groundwater; protection of the environment, wildlife habitat, fisheries, and unique natural areas; protection of historic and archaeological resources; minimizing the adverse impacts on adjacent properties; and fitting the project harmoniously into the fabric of the community.

**SEC. 2. APPLICABILITY OF SITE PLAN REVIEW**

2.1 A person who has any right, title, or interest in a parcel of land must obtain site plan approval prior to commencing any of the following activities, numbered (1) through (6), on the parcel, obtaining a building or plumbing permit for the activities, or undertaking any alteration or improvement of the site:

- 1) The construction or placement of any new building or structure for a nonresidential use, including accessory buildings and structures, which is greater than two thousand five hundred (2,500) sq. ft. in size, within any five (5) year period, and any structure greater than 40 feet in height.
- 2) Existing nonresidential uses, which seek to expand by greater than two thousand five hundred (2,500) sq. ft., within any (5) five-year period, with regard to floor space, parking area, seating capacity or outdoor storage area.
- 3) The conversion of an existing building, in whole or in part, from a residential use to a nonresidential use if the nonresidential use occupies greater than two thousand five hundred (2,500) sq. ft., within any five (5) year period.
- 4) The establishment of a new nonresidential use, including, but not limited to, uses such as gravel pits, golf courses, facilities or land used for outdoor festivals or mass gatherings, commercial mining activities, and other nonstructural nonresidential uses.
- 5) The conversion of an existing nonresidential use, in whole or in part, to another nonresidential use, within any five (5) year period, if the new use changes the basic nature of the existing use such that it increases the intensity of on- or off-site impacts of the use, subject to the standards and criteria of site plan review described in Section 9 of this ordinance.
- 6) The construction or expansion of paved areas or other impervious ground surfaces, including walkways, access drives, and parking lots for nonresidential use involving an area of more than two thousand five hundred (2,500) square feet within any (5) five year period.

2.2 The following activities shall not require site plan approval. Certain of these activities may, however, require the owner to obtain a building permit, plumbing permit or other State of Maine or local approvals:

- 1) The construction, alteration, or enlargement of a single family or two-family dwelling including accessory buildings and structures.
- 2) The placement, alteration, or enlargement of a single manufactured housing or mobile home dwelling, including accessory buildings and structures on individually owned lots.
- 3) Agricultural activities, excluding agricultural buildings and structures.
- 4) Timber harvesting and forest management activities, excluding buildings and structures.
- 5) Activities involving nonresidential buildings or activities that are specifically excluded from review by the provisions of this section.
- 6) Subdivisions as defined by Title 30-A, MRSA Section 4401 and the Town of Dixmont's Subdivision Ordinance.
- 7) No Retroactive Effect - this ordinance shall not apply to buildings or improvements which existed or were under construction when this ordinance became effective.

### **SEC. 3. DEFINITIONS**

#### **3.1. Meaning of Words**

All words not defined herein shall carry their customary and usual meanings. Words used in the present tense shall include the future. Words used in the singular shall include the plural.

#### **3.2. Definitions**

**ABUTTING PROPERTY:** Any lot which is physically contiguous with the subject lot even if only at a point and any lot which is located directly across a street or right-of-way from the subject lot, such that the extension of the side lot lines of the subject lot would touch or enclose the property.

**ACCESSORY BUILDING:** A detached building, the use of which is clearly incidental and subordinate to that of the principal structure or use of the land, and which is located on the same lot as that of the principal structure or use.

**ACCESSORY STRUCTURE OR USE:** A use or structure which is incidental and subordinate to the principal structure or use. 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 Dixmont land whose property is directly or indirectly affected by the granting or denial of an approval under this ordinance; a person whose land abuts land for which approval has been granted and whose land is negatively affected in any manner; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such approval.

**ARTERIAL:** A controlled access road or a street or road with traffic signals at important intersections and/or stop signs on side streets or which is functionally classified by the State of Maine Department of Transportation as an arterial.

**BUILDING:** Any permanent structure, having one or more floors and a roof, which is used for the housing or enclosure of persons, animals or property. When any portion thereof is separated by a division wall without opening, then each such portion shall be deemed a separate building.

**BUILDING FOOTPRINT:** The area covered by a building measured from the exterior surface of the exterior walls at grade level exclusive of cantilevered portions of the building. Where the building is elevated above grade level on posts or similar devices, the building footprint is the area the building would cover if it were located at ground level.

**CHANGE FROM ONE CATEGORY OF NONRESIDENTIAL USE TO ANOTHER CATEGORY OF NONRESIDENTIAL USE:** A change in the type of occupancy of a nonresidential building or structure, or a portion thereof: such that the basic type of use is changed, such as from retail to office or storage to a restaurant, but not including a change in the occupants.

**COLLECTOR STREET:** A street that collects traffic from local streets and connects with arterials or a street or road functionally classified as a collector by the State of Maine Department of Transportation.

**CURB CUT:** The opening along the curb line or street right-of-way line at which point vehicles may enter or leave the street.

**ENLARGEMENT OR EXPANSION OF A STRUCTURE:** An increase of the building footprint and/or increase in the height of the structure beyond its present highest point. Alterations of existing buildings which are required in order to meet the requirements of the Americans with Disabilities Act (ADA) and/or the State of Maine Fire Code are not considered to be enlargements or expansions of a structure and are not required to meet otherwise applicable setback requirements, provided the alterations are the minimum necessary to satisfy the ADA and/or State of Maine Fire Code.

**FISHERIES, SIGNIFICANT FISHERIES:** Areas identified by a governmental agency such as the State of Maine Department of Inland Fisheries and Wildlife, State of Maine Department of Marine Resources as having significant value as fisheries and any areas so identified in the municipality's comprehensive plan.

**FLOOR AREA:** The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls.



**GROUNDWATER:** All of the water found beneath the surface of the ground. For purposes of aquifer protection, this term refers to the subsurface water present in aquifers and recharge areas.

**HISTORIC OR ARCHAEOLOGICAL RESOURCES:** Areas identified by a governmental agency, such as the State of Maine Historic Preservation Commission, as having significant value as an historic or archaeological resource and any areas identified in the municipality's comprehensive plan.

**IMPERVIOUS SURFACE:** The area covered by buildings and associated constructed facilities, areas which have been or will be covered by a low-permeability material, such as asphalt or concrete, and areas such as gravel roads and unpaved parking areas, which have been or will be compacted through design or use to reduce their permeability. Common impervious surfaces include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam, or other surfaces which similarly impede the natural infiltration of stormwater.

**LOCAL STREET:** A public street or road that is not identified as an arterial or collector. A local street includes a proposed street shown on an approved and recorded subdivision.

**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.

**MUNICIPAL OFFICERS:** The Board of Selectmen

**NATURAL AREAS AND NATURAL COMMUNITIES, UNIQUE NATURAL AREAS AND NATURAL COMMUNITIES:** Areas identified by a governmental agency such as the State of Maine Department of Conservation Natural Areas Program as having significant value as a natural area and any areas identified in the municipality's comprehensive plan.

**NONRESIDENTIAL:** Commercial, industrial, office, institutional, utility, or recreational purposes.

**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.

**RECHARGE AREA:** Area composed of permeable, porous material through which precipitation and surface water infiltrate and directly replenish groundwater in aquifers.

**SETBACK:** An open area as defined by Town of Dixmont Land Use Ordinance and Building Code. Such area shall be unoccupied and unobstructed by any building from the ground upward.

**SITE:** All contiguous land in the same ownership, except that lands located on opposite sides of a public or private road are considered each a separate tract or parcel of land unless the road was established by the owner of land on both sides of the road after September 22, 1971.

**SQUARE FEET (sq. ft.):** The length times the width of the intended improvement or in the case of a building, the **BUILDING FOOTPRINT**.

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

**SUBSTANTIALLY COMMENCED; SUBSTANTIALLY COMPLETED:** Construction shall be considered to be substantially commenced when any work beyond the state of excavation, including but not limited to, the pouring of a slab or footings, the installation of piles, the construction of columns, or the placement of a manufactured home on a foundation has begun. Construction shall be considered to be substantially completed when it has been completed to the point where normal functioning, use, or occupancy can occur without concern for the general health, safety, and welfare of the occupant and the general public. At a minimum it shall include the completion of no less than seventy (70) percent of the costs of the proposed improvements within a development and shall include permanent stabilization and/or revegetation of areas of the site that were disturbed during construction.

**USE:** The purpose for which land or a building is arranged, designed, or intended, or for which either land or a building is or may be occupied or maintained.

**VEGETATION:** All live trees, shrubs, ground cover, and other plants.

**WILDLIFE HABITAT, SIGNIFICANT WILDLIFE HABITAT:** Areas identified by a governmental agency such as the State of Maine Department of Inland Fisheries and Wildlife as having significant value as habitat for animals and any areas identified in the municipality's comprehensive plan.

#### **SEC. 4. INTERPRETATION OF THE ORDINANCE AND APPEALS**

The Code Enforcement Officer (CEO) shall be responsible for administering the provisions of this ordinance, including interpreting the provisions hereof.

Any person, who believes that the CEO has made an error in the interpretation or application of the provisions of this ordinance, may appeal such determination to the Board of Appeals within thirty (30) days.

The Board of Appeals shall have the following powers:

- 1) **Administrative Appeals:** To 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 of this Ordinance.

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

A. Variance Appeals

1. The Board of Appeals may grant a variance if the Board finds that the strict application of the ordinance requirements would result in undue hardship. The term "Undue Hardship" means:
  - a. The land in question cannot yield a reasonable economic return, unless a variance is granted;
  - b. That the need for a variance is due to the unique circumstances of the property and not the general conditions of 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.

**SEC.5. ADMINISTRATION AND ENFORCEMENT**

This ordinance shall be administered and enforced by a Code Enforcement Officer (CEO) appointed by the Municipal Officers.

It shall be the duty of the CEO or the CEO's agent to enforce the provisions of this ordinance. If the CEO or the CEO's agent shall find that any provision of this ordinance is being violated, notification shall be provided in writing to the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. The CEO or the CEO's agent shall order discontinuance of illegal use of buildings, structures, additions, or work being done, or shall take any other action authorized by this ordinance to insure compliance with or to prevent violation of its provisions.

When the above action does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon written notification from the CEO, are hereby directed to institute any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of this ordinance; provided, however, that this section shall not prevent any person who may be entitled to equitable or legal relief, to enjoin any act contrary to the provisions of this ordinance.

Any person, firm, or corporation, being the owner of or having control or use of any building or premises, who violated any of the provisions of this ordinance, may be fined in accordance with Title 30-A §4452. Each day such a violation is permitted to exist after notification shall constitute a separate offense. 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/or 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. It is the intent of this section that all administrative appeals and procedures should be employed before any fines are assessed.

#### **SEC. 6. REVIEW AND APPROVAL AUTHORITY**

The Planning Board is authorized to review and act on all site plans for development, requiring site plan review as defined above.

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

#### **SEC. 7. REVIEW PROCEDURES**

The Planning Board shall use the following procedures in reviewing applications for site plan review.

##### **7.1. Preapplication**

Prior to submitting a formal application, the applicant or their representative may request a preapplication conference with the Planning Board. A preapplication conference is strongly advised. The preapplication conference shall be informal and informational in nature. There shall be no fee for a preapplication 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 preapplication conference.

##### **7.1.1. Purpose**

The purposes of the preapplication conference are to:

- 1) Allow the Planning Board to understand the nature of the proposed use and the issues involved in the proposal,
- 2) Allow the applicant to understand the development review process and required submissions,
- 3) Identify issues that need to be addressed in future submissions, and
- 4) Make the applicant aware of any opportunities for coordinating the development with community policies, programs, or facilities.

In addition, the Board may request a site inspection in accordance with subsection 7.2 (5) if deemed necessary and resolve any requests for waivers and variations from the submission requirements.

### 7.1.2. Information Required

There are no formal submission requirements for a preapplication 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 requests for waivers from the submission requirements.

### 7.2. Application Submission and Review Procedures

The applicant must prepare and submit a site plan review application, including the development plan and supporting documentation that meets the submission requirements set forth below. This material must be submitted to the Clerk of the Town of Dixmont.

- 1) At the first meeting at which the application is considered, the Planning Board shall give a dated receipt to the applicant and shall thereafter notify by first-class mail all abutting property owners.  
Written notice of the pending application shall be mailed to the Selectmen, Fire Chief, Road Commissioner, and Plumbing Inspector, and other interested parties.
- 2) Within forty-five (45) days, or on a mutually agreed upon time period, of the receipt of a formal site plan review application, the Planning Board shall review the material and determine whether or not the submission is complete. If the application is determined to be incomplete, the Board shall notify the applicant in writing of this finding, shall specify the additional materials required to make the application complete and shall advise the applicant that the application will not be considered by the Board until the additional information is submitted to the Board. These steps, except the notification requirements, shall be repeated until the application is found to be complete.
- 3) As soon as the Board determines that the application is complete, the Board shall: notify the applicant in writing of this finding, meet the notification requirements of subsection (4) below, and place the item on the agenda for substantive review within forty-five (45) days of this finding.
- 4) The Planning Board shall give written notice of the date, time, and place of the meeting at which the application will be considered to the applicant and all persons who received the notice in (1). Public notice will be given for all public meetings.
- 5) The Planning Board may hold an on-site inspection of the site to review the existing conditions, field verify the information submitted and investigate the development proposal. The Board may schedule this visit either before or after the first meeting at which the application is considered. The Board may decide not to hold an on-site inspection when the site is snow

covered. If an application is pending during a period when there is snow cover, the deadline by which the Planning Board shall take final action on the application as specified in (6) may be extended, which extension shall not exceed forty-five (45) days after the Board is able to conduct an on-site inspection. Written notice of the on-site inspection shall be provided to all parties entitled to notice under subsection (4).

- 6) The Planning Board shall take final action on said application within forty-five (45) days of determining that the application is complete. The Board shall act to deny, to approve, or to approve the application with conditions. The Board may impose such conditions as are deemed advisable to assure compliance with the standards of approval.

In issuing its decision, the Planning Board shall make written findings of fact establishing that the proposed development does or does not meet the standards of approval and other requirements of the Town. The Board shall notify the applicant, all officials who received notice under (4), and all parties who requested to be notified of the action of the Board, including the findings of fact, and any conditions of approval. This requirement can be met through the distribution of minutes of the meeting containing the findings of fact and decision of the Board.

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

### 7.3. Final Approval and Filing

Upon completion of the requirements of this Section and an approval vote by the majority of the Planning Board, the application shall be deemed to have final approval and the site plan shall be signed by a majority of the members of the Board and must be filed with the Town Clerk by the Planning Board within seven (7) days.

### 7.4. Fees

#### 7.4.1. Application Fee

An application for site plan review must be accompanied by an application fee of \$500. This fee is intended to cover the cost of the municipality's administrative processing of the application, including notification, advertising, mailings, and similar costs. The fee shall not be refundable. This application fee must be paid to the municipality and evidence of payment of the fee must be included with the application.

#### 7.4.2. Technical Review Fee

In addition to the application fee, the applicant for site plan review may also be required to pay a technical review fee to defray the municipality's legal and technical costs of the application review.

The Board may require that an expert consultant or consultants review one or more submissions of an application and report as to compliance or noncompliance with this ordinance and advise, if necessary, of procedures which will result in compliance. The consultant shall estimate the cost of such review

and the applicant shall deposit with the Town the full estimated cost that the Town shall place in an escrow account. The Town shall pay the consultant from the escrow account and reimburse the applicant if funds remain after payments are completed. If escrowed funds are insufficient for the consultant's review, the applicant shall deposit additional funds with the Town, based upon the consultant estimate, sufficient for completion of the consultant's review. The consultant shall be fully qualified to provide the required information and shall be mutually acceptable to the Town and the applicant.

## **SEC. 8. SUBMISSION REQUIREMENTS**

Applications for site plan review must be submitted on application forms provided by the municipality. The complete application form, evidence of payment of the required fees, and the required plans and related information must be submitted to the Clerk of the Town of Dixmont. The submission must contain at least the following exhibits and information, unless specifically waived in writing. The Planning Board may waive any of the submission requirements, based upon a written request of the applicant. Such request must be made at the time of the preapplication conference or at the initial review of the application if no preapplication conference is held. A waiver of any submission requirement may be granted only if the Board makes a written finding that the information is not required to determine compliance with the standards.

All applications for site plan review must contain the following information:

- 1) A fully executed and signed copy of the application for site plan review.
- 2) Evidence of payment of the application and technical review fees.
- 3) Eight (8) copies of written materials plus eight (8) sets of maps or drawings containing the information listed below. The written materials must be contained in a bound report. The maps or drawings must be at a scale sufficient to allow review of the items listed under the approval standards and criteria, but in no case shall be more than one hundred (100) feet to the inch for that portion of the tract of land being proposed for development:

### **8.1. General Information**

- 1) Record owner's name, address, and phone number and applicant's name, address and phone number if different.
- 2) The location of all required building setbacks, yards, and buffers.
- 3) Names and addresses of all abutting property owners.
- 4) Sketch map showing general location of the site within the municipality based upon a reduction of the tax maps.
- 5) Boundaries of all contiguous property under the total or partial control of the owner or applicant regardless of whether all or part is being developed at this time.
- 6) The tax map and lot number of the parcel or parcels on which the project is located.

- 7) A copy of the deed to the property, an option to purchase the property or other documentation to demonstrate right, title or interest in the property on the part of the applicant.
- 8) The name, registration number, and seal of the person who prepared the plan, if applicable.
- 9) Evidence of the applicant's technical and financial capability to carry out the project as proposed.

## 8.2. Existing Conditions

- 1) Zoning classification(s), including overlay and/or subdistricts, of the property and the location of zoning district boundaries if the property is located in 2 or more zoning districts or subdistricts or abuts a different district.
- 2) The bearings and length of all property lines of the property to be developed and the source of this information. The Planning Board may waive this requirement of a boundary survey when sufficient information is available to establish, on the ground, all property boundaries.
- 3) Location and size of any existing sewer and water mains, culverts and drains, on-site sewage disposal systems, wells, underground tanks or installations, and power and telephone lines and poles on the property to be developed, on abutting streets, or land that may serve the development, and an assessment of their adequacy and condition to meet the needs of the proposed use. Appropriate elevations must be provided as necessary to determine the direction of flow.
- 4) Location, names, and present widths of existing public and/or private streets and rights-of-way within or adjacent to the proposed development.
- 5) The location, dimensions and ground floor elevation of all existing buildings on the site.
- 6) The location and dimensions of existing driveways, parking and loading areas, walkways, and sidewalks on or immediately adjacent to the site.
- 7) Location of intersecting roads or driveways within two hundred (200) feet of the site.
- 8) The location of open drainage courses, wetlands, stonewalls, graveyards, fences, stands of trees, and other important or unique natural areas and site features, including but not limited to, floodplains, deer wintering areas, significant wildlife habitats, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, sand and gravel aquifers, and historic and/or archaeological resources, together with a description of such features.
- 9) The direction of existing surface water drainage across the site.
- 10) The location, front view, dimensions, and lighting of existing signs.
- 11) Location and dimensions of any existing easements and copies of existing covenants or deed restrictions.
- 12) The location of the nearest fire hydrant, dry hydrant or other water supply for fire protection.



### 8.3. Proposed Development Activity

- 1) A general description of the proposed use or activity.
- 2) Estimated demand for water supply and sewage disposal together with the location and dimensions of all provisions for water supply and wastewater disposal, and evidence of their adequacy for the proposed use, including soils test pit data if on-site sewage disposal is proposed.
- 3) The direction of proposed surface water drainage across the site and from the site, with an assessment of impacts on downstream properties.
- 4) Provisions for handling all solid wastes, including hazardous and special wastes and the location and proposed screening of any on-site collection or storage facilities.
- 5) The location, dimensions, and materials to be used in the construction of proposed driveways, parking and loading areas, and walkways and any changes in traffic flow onto or off-site.
- 6) Proposed landscaping and buffering.
- 7) The location, dimensions, and ground floor elevation of all proposed buildings or building expansion proposed on the site.
- 8) Location, front view, materials, and dimensions of proposed signs together with the method for securing the sign.
- 9) Location and type of exterior lighting.
- 10) The location of all utilities, including fire protection systems.
- 11) Description of noise, odor, and visible emissions to be generated during construction and operation of the development.
- 12) An estimate of the peak hour and daily traffic to be generated by the project.
- 13) Stormwater calculations, erosion and sedimentation control measures, and water quality and/or phosphorous export management provisions, if the project requires a stormwater permit from the State of Maine Department of Environmental Protection or if the Planning Board determines that such information is necessary based upon the scale of the project or the existing conditions in the vicinity of the project.

### 8.4. Approval Block

Space must be provided on the plan drawing for the seven signatures of the Planning Board and date together with the following words, "Approved: Town of Dixmont Planning Board".

### **SEC. 9. APPROVAL STANDARDS (AS)/PERFORMANCE STANDARDS (PS) AND CRITERIA**

The following criteria shall be used by the Planning Board in reviewing applications for site plan review and shall serve as minimum requirements for approval of the application and post approval performance by the applicant. The application shall be approved unless the Planning Board determines that the applicant has failed to meet one or more of these standards. In all instances, the burden of

proof shall be on the applicant who must produce evidence sufficient to warrant a finding that all applicable criteria have been met.

#### 9.1. Utilization of the Site (AS)

The plan for the development must reflect the natural capabilities of the site to support development. Buildings, lots, and support facilities must be clustered in those portions of the site that have the most suitable conditions for development. Environmentally sensitive areas, including but not limited to, wetlands, steep slopes, floodplains, significant wildlife habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, and sand and gravel aquifers must be maintained and preserved to the maximum extent. Natural drainage areas must also be preserved to the maximum extent. The development must include appropriate measures for protecting these resources, including but not limited to, modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.

#### 9.2. Adequacy of Road System (AS)

Vehicular access to the site must be on roads which have adequate capacity to accommodate the additional traffic generated by the development. For developments which generate one hundred (100) or more peak hour trips based on the latest edition of the Trip Generation Manual of the Institute of Traffic Engineers, intersections on major access routes to the site within one (1) mile of any entrance road which are functioning at a Level of Service of D or better prior to the development must function at a minimum at Level of Service D after development. If any such intersection is functioning at a Level of Service E or lower prior to the development, the project must not reduce the current level of service. This requirement may be waived by the Planning Board if the project is located within a growth area designated in the Town's adopted Comprehensive Plan and the Board determines that the project will not have an unnecessary adverse impact on traffic flow or safety.

A development not meeting this requirement may be approved if the applicant demonstrates that:

- 1) A public agency has committed funds to construct the improvements necessary to bring the level of access to this standard, or
- 2) The applicant will assume financial responsibility for the improvements necessary to bring the level of service to this standard and will assure the completion of the improvements with a financial guarantee acceptable to the municipality.

#### 9.3. Access into the Site (AS)

Vehicular access to and from the development must be safe and convenient.

- 1) Any driveway or proposed street must be designed so as to provide at least the minimum sight distance according to the State of Maine Department of Transportation standards, to the maximum extent possible.

- 2) Points of access and egress must be located to avoid hazardous conflicts with existing turning movements and traffic flows.
- 3) The intersection of any access/egress drive or proposed street must function:
  - a. at a Level of Service of D following development, if the project will generate one thousand (1,000) or more vehicle trips per twenty-four (24) hour period; or
  - b. at a level which will allow safe access into and out of the project if less than one thousand (1,000) trips are generated.
- 4) Where a lot has frontage on two (2) or more streets, the primary access to and egress from the lot must be provided from the street where there is less potential for traffic congestion and for traffic and pedestrians hazards. Access from other streets may be allowed if it is safe and does not promote shortcutting through the site.
- 5) 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.
- 6) Accessways must be designed and have sufficient capacity to avoid queuing of entering vehicles on any public street.

#### 9.4. Accessway Location and Spacing (AS)

Accessways must meet the following standards:

- 1) Private entrances/exits must be located at least fifty (50) feet from the closest unsignalized intersection and one hundred fifty (150) feet from the closest signalized intersection, as measured from the point of tangency for the corner of the intersection to the point of curvature for the accessway.
- 2) Private accessways in or out of a development must be separated by a minimum of seventy-five (75) feet where possible.

#### 9.5. Internal Vehicular Circulation and Parking (AS)

The layout of the site must provide for the safe movement and parking of passenger, service, and emergency vehicles through the site.

- 1) 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 WB-40 vehicles. (WB-40 vehicle is a semitrailer truck with an overall wheelbase of 40 feet.)
- 2) Clear routes of access must be provided and maintained for emergency vehicles to and around buildings and must be posted with appropriate signage (eg. fire lane- no parking).
- 3) The layout and design of parking areas must provide for safe and convenient circulation of vehicles throughout the lot.
- 4) All roadways must be designed to harmonize with the topographic and natural features of the site insofar as practical by minimizing filling, grading, excavation, or other similar activities

which result in unstable soil conditions and soil erosion, by fitting the development to the natural contour of the land and avoiding substantial areas of excessive grade and tree removal, and by retaining existing vegetation during construction. The road network must provide for vehicular, pedestrian, and cyclist safety, all season emergency access, snow storage, and delivery and collection services.

- 5) 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 accessways not exceeding twenty-four (24) feet in width.

#### 9.6. Pedestrian Circulation (AS)

The site plan must provide for a system of pedestrian ways within the development appropriate to the type and scale of development. This system must connect the major building entrances/exits with parking areas and with existing sidewalks, if they exist or are planned in the vicinity of the project. The pedestrian network may be located either in the street right-of-way or outside of the right-of-way in open space or recreation areas. The system must be designed to link the project with residential, recreational, and commercial facilities, schools, bus stops, and existing sidewalks in the neighborhood or, when appropriate, to connect with amenities such as parks or open space on or adjacent to the site.

#### 9.7. Stormwater Management (AS)

Adequate provisions must be made for the collection and disposal of all stormwater that runs off proposed streets, parking areas, roofs, and other surfaces, through a stormwater drainage system and maintenance plan, which must not have adverse impacts on abutting or downstream properties.

- 1) To the extent possible, the development must retain stormwater on the site using the natural features of the site.
- 2) Stormwater runoff systems must detain or retain water such that the rate of flow from the site after development does not exceed the predevelopment rate.
- 3) The applicant must demonstrate that on- and off-site downstream channel or system capacity is sufficient to carry the flow without adverse effects, including but not limited to flooding and erosion of shoreland areas, or that the applicant will be responsible for whatever improvements are needed to provide the required increase in capacity and/or mitigation.
- 4) All natural drainage ways must be preserved at their natural gradients and must not be filled or converted to a closed system unless approved as part of the site plan review.
- 5) The design of the stormwater drainage system must provide for the disposal of stormwater without damage to streets, adjacent properties, downstream properties, soils, and vegetation.
- 6) The design of the storm drainage systems must be fully cognizant of upstream runoff which must pass over or through the site to be developed and provide for this movement.

- 7) The biological and chemical properties of the receiving waters must not be degraded by the stormwater runoff from the development site. The use of oil and grease traps in manholes, the use of on-site vegetated waterways, and vegetated buffer strips along waterways and drainage swales, and the reduction in use of deicing salts and fertilizers may be required, especially where the development stormwater discharges into a gravel aquifer area or other water supply source, or a great pond.

#### 9.8. Erosion Control (AS)

All building, site, and roadway designs and layouts must harmonize with existing topography and conserve natural surroundings to the fullest extent possible, such that filling, excavation, and earth moving activity must be kept to a minimum. Parking lots on sloped sites must be terraced to avoid undue cut and fill, and/or the need for retaining walls. Natural vegetation must be preserved and protected wherever possible.

Soil erosion and sedimentation of watercourses and water bodies will be minimized by an active program meeting the requirements of the most recent edition of the State of Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices.

#### 9.9. Water Supply (AS)

The development must be provided with a system of water supply that provides each use with an adequate supply of water.

If the project is to be served by a public water supply, the applicant must secure and submit a written statement from the supplier that the proposed water supply system conforms with its design and construction standards, will not result in an undue burden on the source or distribution system, and will be installed in a manner adequate to provide needed domestic and fire protection flows.

#### 9.10. Sewage Disposal (AS)

The development must be provided with a method of disposing of sewage that is in compliance with the State of Maine Plumbing Code.

- 1) All sanitary sewage from new or expanded uses must be discharged into a public sewage collection and treatment system when such facilities are currently available or can reasonably be made available at the lot line and have adequate capacity to handle the projected waste generation.
- 2) If the public collection system is not at the lot line, but can be extended in the public right-of-way, the collection system must be extended by the owner and the new or expanded use connected to the public system. Such extension shall be required if the public system is within one hundred (100) feet of a new use with a design sewage flow of less than five hundred (500) gallons per day or within three hundred (300) feet of a new use with a design sewage flow of five hundred (500) or more gallons per day and the system has adequate capacity to

accommodate the additional flow. The Planning Board may waive this requirement if the use is already served by a properly functioning subsurface disposal system that is properly sized for the projected flows, provided that connection to the public system will occur if and when the subsurface system needs to be replaced.

- 3) If the public system cannot serve or be extended to serve a new or expanded use, the sewage must be disposed of by an on-site sewage disposal system meeting the requirements of the Subsurface Wastewater Disposal Rules.
- 4) When two (2) or more lots or buildings in different ownership share the use of a common subsurface disposal system, the system must be owned and maintained in common by an owners' association. Covenants in the deeds for each lot must require mandatory membership in the association and provide for adequate funding of the association to assure proper maintenance of the system.
- 5) Industrial or commercial wastewater may be discharged to public sewers in such quantities and/or of such quality as to be compatible with sewage treatment operations. Such wastes may require pretreatment at the industrial or commercial site in order to render them amenable to public treatment processes. Pretreatment includes, but is not limited to, screening, grinding, sedimentation, pH adjustment, surface skimming, chemical oxidation and reduction and dilution. The pretreatment standards shall be determined by the applicable State of Maine standards.

#### 9.11. Utilities (AS)

The development must be provided with electrical, telephone, and telecommunication service adequate to meet the anticipated use of the project. New utility lines and facilities must be screened from view to the extent feasible. If the service in the street or on adjoining lots is underground, the new service must be placed underground.

#### 9.12. Natural Features (AS)

The landscape must be preserved in its natural state insofar as practical by minimizing tree removal, disturbance and compaction of soil, and by retaining existing vegetation insofar as practical during construction. Extensive grading and filling must be avoided as far as possible.

#### 9.13. Groundwater Protection (AS)

The proposed site development and use must not adversely impact either the quality or quantity of groundwater available to abutting properties or to public water supply systems. Applicants whose projects involve on-site water supply or sewage disposal systems with a capacity of two thousand (2,000) gallons per day or greater must demonstrate that the groundwater at the property line will comply, following development, with the standards for safe drinking water as established by the State of Maine.

#### 9.14. Water Quality Protection

All aspects of the project must be designed so that:

- 1) (PS) No person shall locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity, or temperature that may run off, seep, percolate, or wash into surface or groundwaters so as to contaminate, pollute, or harm such waters or cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste, or unsightliness or be harmful to human, animal, plant, or aquatic life.
- 2) (AS) All storage facilities for fuel, chemicals, chemical or industrial wastes, and biodegradable raw materials, must meet the standards of the State of Maine Department of Environmental Protection and the State of Maine Fire Marshall's Office.
- 3) (AS) If the project is located within the watershed of a body of water most at risk from development as identified by the State of Maine Department of Environmental Protection (DEP), the project must comply with the standards of the DEP with respect to the export of total suspended solids and/or phosphorous.

#### 9.15. Hazardous, Special and Radioactive Materials (PS)

The handling, storage, and use of all materials identified by the standards of a federal or State of Maine agency as hazardous, special or radioactive must be done in accordance with the standards of these agencies.

No flammable or explosive liquids, solids, or gases shall be stored in bulk above ground, unless they are located at least seventy-five (75) feet from any lot line, or forty (40) feet in the case of underground storage. All materials must be stored in a manner and location which is in compliance with appropriate rules and regulations of the State of Maine Department of Public Safety and other appropriate federal, State of Maine, and local regulations.

#### 9.16. Shoreland Relationship (AS)

The development must not adversely affect the water quality or shoreline of any adjacent water body. The development plan must provide for access to abutting navigable water bodies for the use of the occupants of the development as appropriate.

#### 9.17. Technical and Financial Capacity (AS)

The applicant must demonstrate having the financial and technical capacity to carry out the project in accordance with this ordinance and the approved plan.

#### 9.18. Solid Waste Disposal (AS)

The proposed development must provide for adequate disposal of solid wastes. All solid waste must be disposed of at a licensed disposal facility having adequate capacity to accept the project's wastes.

### 9.19. Historic and Archaeological Resources (AS)

If any portion of the site has been identified as containing historic or archaeological resources, the development must include appropriate measures for protecting these resources, including but not limited to, modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.

### 9.20. Floodplain Management (AS)

If any portion of the site is located within a special flood hazard area as identified by the Federal Emergency Management Agency, all use and development of that portion of the site must be consistent with the Town's Floodplain management provisions.

### 9.21. Noise

- 1) (AS/PS) The development must control noise levels such that it will not create a nuisance for neighboring parties.
- 2) (PS) No person shall engage in construction activities on a site abutting any residential use between the hours of 11 p.m. and 5 a.m.

The following uses and activities shall be exempt from the noise regulations:

- 1) Noises created by construction and temporary maintenance activities on the project between 6:00a.m. and 10:00 p.m.
- 2) The noises of safety signals, warning devices, and emergency pressure relief valves and any other emergency activity.
- 3) Traffic noise on public roads or railroads not related to construction activity.

### 9.22. Buffering of Adjacent Uses (AS)

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:

- 1) Shield neighboring properties from any adverse external effects of the development, or
- 2) 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.

#### 9.23 Exterior Lighting (AS/PS)

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 but which does not directly or indirectly produce deleterious effects on abutting properties or which would 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. Direct or indirect illumination must not exceed 0.5 foot-candles at the lot line or upon abutting residential properties.

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 which is open for business during that period.

#### 9.24 Performance Standards (AS)

An applicant must show the proposed development is designed to comply with the above indicated Performance Standards (PS).

### **SEC. 10. POST APPROVAL Activities**

#### 10.1. Limitation of Approval

Construction of the improvements covered by any site plan approval must be substantially commenced within twelve (12) months and substantially completed within twenty-four (24) months, unless otherwise extended, of the date upon which the approval was granted. If construction has not been substantially commenced and substantially completed within the specified period, the approval shall be null and void. The applicant may request an extension of the approval deadline prior to the expiration of the period. Such request must be in writing and must be made to the Planning Board. The Planning Board may grant up to two (2), six (6) month extensions to the periods if the approved plan conforms to the ordinances in effect at the time the extension is granted and any and all federal and State of Maine approvals and permits are current.

#### 10.2. Incorporation of Approved Plan

One copy of the approved site plan must be included with the application for the building permit for the project and all construction activities must conform to the approved plan, including any conditions of approval and minor changes approved by the Code Enforcement Officer to address field conditions.

### 10.3. Improvement Guarantees

#### 10.3.1. Application

- 1) Improvement Guarantee - The Planning Board may require the posting of an improvement guarantee in such amount and form as specified in subsection 10.3.2, as is reasonably necessary to ensure the proper installation of all off-site improvements required as conditions of approval. The nature and duration of the guarantee shall be structured to achieve this goal without adding unnecessary costs to the applicant.
- 2) Upon substantial completion of all required improvements, the developer must notify the Planning Board of the completion or substantial completion of improvements, and must send a copy of such notice to the Municipal Officers. The respective Municipal Officers shall inspect all improvements and must file a report indicating approval, partial approval, or rejection of such improvements with a statement of reasons for any rejection.
- 3) The Planning Board shall approve, partially approve, or reject the improvements on the basis of the report of the Municipal Officers.
- 4) If the improvements are approved, the guarantee shall be released. Where partial approval is granted, the developer shall be released from liability only for that portion of the improvements approved.

#### 10.3.2. Form of Guarantee

Performance guarantees may be provided by a variety of means including, but not limited to, the following that must be approved as to form and enforceability by the Municipal Officers.

- 1) Security Bond -The applicant may obtain a security bond from a surety bonding company authorized to do business in the State of Maine.
- 2) Letter of Credit - The applicant may provide an irrevocable letter of credit from a bank or other reputable lending institution.
- 3) Escrow Account -The applicant may deposit cash or other instruments readily convertible into cash at face value, either with the municipality, or in escrow with a bank. Any such account must require Town approval for withdrawal and must stipulate that the Town can withdraw the money upon forty-eight (48) hour advance notice to the applicant to complete the guaranteed improvements.

#### 10.4. Submission of As-Built Plans

Any project involving the construction of more than twenty thousand (20,000) square feet of gross floor area or fifty thousand (50,000) square feet of impervious surface, must provide the Code Enforcement Officer with a set of construction plans showing the building(s) and site improvements as actually constructed on the site. These "as-built" plans must be submitted within thirty (30) days of the occupancy of the building.

#### 10.5. Minor Changes to Approved Plans

Minor changes in approved plans necessary to address field conditions may be approved by the Code Enforcement Officer, provided that any 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 on the approved plan by the Code Enforcement Officer at the next scheduled Planning Board meeting.

#### 10.6. Amendments to Approved Plans

Approvals of site plans are dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from the plans, proposals, and supporting documents, except minor changes that do not affect approval standards, is subject to review and approval by the Planning Board.

### **SEC. 11. APPEAL OF PLANNING BOARD ACTIONS**

An aggrieved party may appeal any decision of the Planning Board under this ordinance to the Dixmont Board of Appeals within thirty days. Appeal of any actions taken by the Dixmont board of Appeals shall be to the Penobscot County Superior Court within thirty days of the Board of Appeals decision in accordance with the State of Maine Rules of Civil Procedure, Rule 80B.

### **SEC. 12. AMENDMENTS TO THE ORDINANCE**

Amendments of this ordinance may be initiated by the Municipal Officers, the Planning Board, or by written petition of Dixmont residents containing signatures of at least 10% of the most recent gubernatorial vote.

No proposed amendments to this ordinance shall be referred to the Town Meeting until the municipal officers have held a public hearing on the proposal, notice of which shall be posted at least fourteen (14) days prior to such hearing and advertised in a newspaper of general circulation in the municipality at least two (2) times with the date of first publication being at least fourteen (14) days prior to the hearing and the second at least seven (7) days prior to the hearing.

The proposed amendments shall be adopted by a simple majority vote of the Town Meeting.

### **SEC. 13. SEVERABILITY**

The invalidity of any section or provision of this ordinance shall not be held to invalidate any other section or provision of this ordinance.

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ARTICLE 1 PURPOSES

The purpose of this ordinance is to assure the comfort, convenience, safety, health and welfare of the people of the town of Dixmont, to protect the environment and to promote the development of an economically sound and stable community. To this end, in approving subdivisions within the Town of Dixmont, Maine, the Planning Board shall consider the following criteria and before granting approval shall make findings of fact that the provisions of this ordinance have been met and that the proposed subdivision will meet the guidelines of Title 30-A, M.R.S.A. §4404. The subdivision:

- 1.1 Will not result in undue water or air pollution. In making this determination, the Board shall at least consider the elevation of the land above sea level and its relation to the flood plains; the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable state and local health and water resources regulations;
- 1.2 Has sufficient water available for the reasonably foreseeable needs of the subdivision;
- 1.3 Will not cause an unreasonable burden on an existing water supply, if one is to be utilized;
- 1.4 Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result;
- 1.5 Will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads existing or proposed;
- 1.6 Will provide for adequate solid and sewage waste disposal;
- 1.7 Will not cause an unreasonable burden on the ability of the municipality to dispose of solid waste and sewage if municipal services are to be utilized;
- 1.8 Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline; and
- 1.9 Is in conformance with a duly adopted subdivision ordinance, comprehensive plan, development plan or land use plan, if any.
- 1.10 The subdivider has adequate financial and technical capacity to meet the above stated standards.

ARTICLE I PURPOSES

- 1.11 Whenever situated in whole or in part, within 250 feet of any pond, lake, river or stream, will not adversely affect the quality of the body of water or unreasonably affect the shoreline of that body of water.
- 1.12 Will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.
- 1.13 All principal structures within the subdivision shall be constructed with their lowest floor, including the basement, at least one foot above a 100-year flood elevation.

ARTICLE II AUTHORITY AND ADMINISTRATION

2.1 Authority.

- A. These standards have been prepared in accordance with the provisions of Title 30-A N.R.S.A. ss.4403.
- B. These standards shall be known and may be cited as "Subdivision Ordinance of the Town of Dixmont, Maine."
- C. Should any provisions of these standards be held invalid by any court, then such decision shall not affect the validity of the remainder of the standards.

2.2 Administration.

- A. The Planning Board of the Town of Dixmont, hereinafter called the Board, shall administer these standards.
- B. The provisions of these standards shall pertain to all subdivisions, as defined in Title 30-A M.R.S.A. ss.4401, within the boundaries of the Town of Dixmont.



**ARTICLE III DEFINITIONS**

In general, words and terms used in this ordinance shall have their customary dictionary meanings. More specifically, certain words and terms used herein are defined as follows:

**Cluster Subdivision:** A subdivision in which the lot sizes are reduced below those normally required in the zoning district in which the development is located in return for the provision of a corresponding amount of permanent open space owned in common by lot/unit owners, the Town, or a land conservation organization.

**Complete Application:** An application shall be considered complete upon submission of the required fee and all information required by this ordinance for a Final Plan, or by a vote by the Board to waive the submission of required information.

**Comprehensive Plan or Policy Statement:** Any part or element of the overall plan or policy for development of the municipality as defined in Title 30 M.R.S.A., Section 4961.

**Contiguous Lots:** Lots which adjoin at any line or point, or are separated at any point by a body of water less than fifteen feet wide.

**Developed Area:** Any area on which a site improvement or change is made, including buildings, landscaping, parking area, and roads.

**Driveway:** A private vehicular access-way serving a dwelling unit.

**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, sleeping, bathing and sanitary facilities; includes single family houses, and the units in a duplex, apartment house, multifamily dwellings, and residential condominiums.

**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.

**High Intensity Soil Survey (class A):** A map prepared by a Certified Soil Scientist, identifying the soil types down to 1/8 acre or less at a scale of 1 inch equals 100 feet or larger. The soils shall be identified in accordance with the National Cooperative Soil Survey. The map shall show the location of all test pits and base lines under the direction of a registered land surveyor or qualified

### ARTICLE III DEFINITIONS

professional engineer, 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 point. There shall be a base map with 2 foot contour lines included, by a ground survey or aerial survey with ground control. Single soil tests pits and their evaluation for suitability for subsurface wastewater disposal systems shall not be considered to constitute high intensity soil surveys.

**High Intensity Soil Survey (class B):** A map prepared by a Certified Soil Scientist, identifying the soil types down to 1 acre or less at a scale of 1 inch equals 500 feet or larger. The soils shall be identified in accordance with the National Cooperative Soil Survey. The map shall show the location of all test pits by means of compass by chaining pacing or taping from known survey points, 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 point. There shall be a base map with 5 foot contour lines included. Single soil tests pits and their evaluation for suitability for subsurface wastewater disposal systems shall not be considered to constitute high intensity soil surveys.

**100 Year Flood:** The level of flood that, on the average, is likely to occur once every 100 years (that has a one percent chance of occurring in any year).

**Normal High Water Mark of Inland Waters:** That line on the shores of banks on non-tidal waters which is apparent because of the different character of the contiguous soil or the vegetation due to the prolonged action of the water. Relative to vegetation, it is that line where the vegetation changes from predominantly aquatic to predominantly terrestrial (by way of illustration, aquatic vegetation includes but is not limited to the following plants and plant groups: water lily, pond lily, pickerelweed, cattail, wild rice, sedges, rushes, and marsh grasses; and terrestrial vegetation includes but is not limited to the following plants and plant groups: upland grasses, aster, lady slipper, wintergreen, partridge berry, sarsaparilla, pines, cedars, oaks, ashes, alders, elms, and maples). In places where the shore or bank is of such character that the high water mark cannot be easily determined, (ledges, rapidly eroding or slumping banks) the normal high water mark shall be estimated from places where it can be determined by the above method.

**Official Submittal Date:** The date upon which the Board issues a receipt indicating an application has been submitted.

ARTICLE III DEFINITIONS

**Person:** Includes a firm, association, organization, partnership, trust, company, or corporation, as well as an individual.

**Planned Unit Development:** A development controlled by a single developer for a mix of residential, commercial, and industrial uses. A PUD is undertaken in a manner that treats the developed area in its entirety to promote the best use of land, including the creation of open space, a reduction in the length of road and utility systems, and the retention of the natural characteristics of the land.

**Planning Board:** The Planning Board of the Town of Dixmont, created under Title 30 M.R.S.A., 4960-C [2](D).

**Preliminary Subdivision Plan:** The preliminary drawings indicating the proposed layout of the subdivision to be submitted to the Board for its consideration.

**Recording Plan:** A copy of the Final Plan which is recorded at the Registry of Deeds and which need not show information not relevant to the transfer of an interest in the property, such as sewer and water line locations and sizes, culverts, and building lines.

**Roads:** Public and private ways such as alleys, avenues, boulevards, highways, roads, streets and other rights-of-way, as well as areas on the subdivision plans designated as rights-of-way.

Road Classification:

Arterial road: A major thoroughfare which serves as a major traffic way for travel between and through the municipality.

Collector road: A road servicing at least fifteen lots or dwelling units, or roads which serve as feeders to arterial roads, and collectors of traffic from minor roads.

Industrial or Commercial road: Roads servicing industrial or commercial uses.

Minor road: A road servicing less than fifteen lots or dwelling units, to be built to town standards. These roads have the potential of becoming accepted for town maintenance.

Private road: A vehicular access way serving no more than eight dwelling units, which is not intended to be dedicated as a public way.

Subdivision (as defined in Title 30-A X.R.S.A. section 4401):

### ARTICLE III DEFINITIONS

The division of a tract or parcel of land into three or more lots within any five-year period, which period begins after September 23, 1971, whether accomplished by sale, lease, development, buildings, or otherwise, provided that a division accomplished by devise, condemnation, order of court, gift to a person related to the donor by blood marriage or adoption, unless the intent of such gift is to avoid the objectives of this ordinance, or by transfer of any interest in land to the owner of land abutting thereon, shall not be considered to create a lot or lots for the purpose of this ordinance.

The term "subdivision" shall also include the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-year period and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period. The area included in the expansion of an existing structure is deemed to be a new structure for the purpose of this paragraph.

In determining whether a tract or parcel of land is divided into three or more lots, the first dividing of such tract or parcel, unless otherwise exempted herein, shall be considered to create the first two lots and the next dividing of either of said first two lots, by whomever accomplished, unless otherwise exempted herein, shall be considered to create the third lot, unless both such dividings are accomplished by a subdivider who shall have retained one of such lots for his/her own use as a single family residence or for open space land as defined in Title 36, section 1102, for a period of at least five years prior to such second dividing. Lots of all sizes will be reviewed under this ordinance, including lots greater than 40 acres in size.

In determining the number of dwelling units in a structure, the provisions regarding the determination of the number of lots shall apply, including exemptions from the definition of a subdivision of land.

**Subdivision, Major:** Any subdivision containing more than five lots or dwelling units, or any subdivision containing a proposed road, or any subdivision with cluster development. This includes subdivisions with lots greater than 40 acres.

**Subdivision, Minor:** Any subdivision containing five lots or dwelling units or less, and in which no road is proposed to be constructed. This includes subdivisions with lots greater than 40 acres.

**Tract, or Parcel, of Land:** All contiguous land in the same ownership, whether or not the tract is separated at any point by: an intermittent or non-navigable stream, or a private road that was established by the owner of land on both sides thereof. If the land is located on opposite sides of a public road, or a private road that was not established by an owner of land, on, both sides, it shall be considered a separate tract or parcel of land.

ARTICLE IV-A ADMINISTRATIVE PROCEDURE  
MINOR SUBDIVISION

**4A.1 Purposes.** The purpose of this Article is to establish an orderly, equitable and expeditious procedure for reviewing minor subdivisions.

**4A.2 Minor Subdivision Procedure.** The following is a timetable for the submission and review of minor subdivision applications. In order to avoid delays in processing applications or revisions for subdivision review, the applicant shall request to be placed on the Board's agenda at least *one week* in advance of a regularly scheduled meeting by contacting the Board's Chairperson. Applicants who attend a meeting but who are not on the Board's agenda may be heard but only after all agenda items have been completed, and then only if a majority of the Board so votes.

Note: The symbol # denotes **Subdivider** and the symbol \* denotes **Board**

- A. #- Request to be on agenda at least one week prior to Board meeting.
- B. #- Presentation and submission of preapplication sketch plan at Board meeting.
- C. \*- Within thirty *days* of presentation the Board shall hold an on-site inspection of the property, and shall determine and inform the applicant of the contour interval (if required) for the Final Plan.
  - #- Applicant shall flag proposed lot corners prior to onsite inspection.
- D. #- Within *six months* after on-site inspection, the applicant shall submit an application for approval of a Final Plan at least seven days prior to a scheduled Board meeting. Failure to do so shall require resubmission of the Sketch Plan.
  - \* - The Board shall issue a dated receipt to the subdivider upon receipt of the application. The Board shall determine if the application is complete. If not, the Board shall notify applicant and specify additional material needed to make application complete.
  - \* - Upon determination that a complete application has been submitted for review, the Board shall issue a dated receipt to the subdivider. The Board will also notify by mail all abutting property owners, as well as property owners across a public way from the proposed subdivision, specifying the location of the proposed subdivision and a general

# denotes Subdivider

\* denotes Board

ARTICLE IV-A ADMINISTRATIVE PROCEDURE  
MINOR SUBDIVISION

description of the project.

- E. \*- If the Board decides to hold a public hearing, it shall hold the hearing within *thirty days* of receipt of a complete application, and shall publish notice of the date, time and place of the hearing in a newspaper of general circulation in the municipality at least twice, the date of the first publication to be at least *seven days* prior to the hearing.
- F. \*- Within *thirty days* of a public hearing, or within sixty *days* of receipt of 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 subdivider, the Board shall make findings of fact on the application, and approve, approve with conditions, or deny the Final Plan. The Board shall specify in writing its findings of fact and reasons for any conditions or denial.
- G. #- Any aggrieved party may appeal any Board decision within *thirty days* of findings to the Board of Appeals.

# denotes Subdivider

\* denotes Board

ARTICLE IV-B ADMINISTRATIVE PROCEDURE  
MAJOR SUBDIVISION

**4B.1 Purposes.** The purpose of this Article is to establish an orderly, equitable and expeditious procedure for reviewing major subdivisions.

**4B.2 Major Subdivision Procedure.** The following is a timetable for the submission and review of major subdivision applications. In order to avoid delays in processing applications or revisions for subdivision review, the applicant shall request to be placed on the Board's agenda at least one week in advance of a regularly scheduled meeting by contacting the Board's Chairperson. Applicants who attend a meeting but who are not on the Board's agenda may be heard but only after all agenda items have been completed, and then only if a majority of the Board so votes.

**Note:** The symbol # denotes Subdivider, and the symbol \* denotes Board.

- A. #- Request to be on agenda at least one week prior to Board meeting.
- B. #- Presentation and submission of preapplication sketch plan at Board meeting.
- C. \*- Within *thirty days* of presentation the Board shall hold an on-site inspection of the property, and shall determine and inform the applicant of the contour interval (if required) for the Preliminary Plan.  
  
#- Applicant shall flag the centerline of any proposed streets, at the approximate intersections of the street centerlines, and at proposed lot corners prior to on-site inspection.
- D. #- Within *six months* after on-site inspection, the applicant shall submit an application for approval of a Preliminary Plan at least seven days prior to a scheduled Board meeting. Failure to do so shall require resubmission of the Sketch Plan to the Board. The Preliminary Plan shall approximate the layout shown on the Sketch Plan, plus any recommendations made by the Board.  
  
\*- The Board shall issue a dated receipt to the subdivider upon receipt of the application. Within *thirty days* of receipt of a Preliminary Plan the Board shall notify the applicant in writing whether or not the application is complete, and what, if any, additional submissions are required for a complete application.
- E. \*- Upon determination that a complete preliminary application has been submitted for review, the Board shall

# denotes Subdivider

\* denotes Board

ARTICLE IV-B ADMINISTRATION-PROCEDURE  
MAJOR SUBDIVISION

issue a dated receipt to the subdivider. The Board will also notify by mail all abutting property owners, as well as property owners across a public way from the proposed subdivision, specifying the location of the proposed subdivision and a general description of the project.

\*- If the Board decides to hold a public hearing, it shall hold the hearing within thirty days of receipt of a complete application, and shall publish notice of the date, time and place of the hearing in a newspaper of general circulation in the municipality at least twice, the date of the first publication to be at least *seven days* prior to the hearing.

F. \*- Within *thirty days* of a public hearing, or within *sixty days* of receipt of 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 subdivider, the Board shall make findings of fact on the application, and approve, approve with conditions, or deny the Preliminary Plan. The Board shall specify in writing its findings of fact and reasons for any conditions or denial.

G. #- The subdivider shall, within *six months* after the approval of the Preliminary Plan, file with the Board an application for approval of the Final Plan at least seven days prior to a scheduled meeting of the Board. If the application for the Final Plan is not submitted within six months after Preliminary Plan approval, the Board may refuse without prejudice to act on the Final Plan, and require resubmission of the Preliminary Plan. The Final Plan shall approximate the layout shown on the Preliminary Plan , plus any recommendations made by the Board.

\*-The Board shall issue a dated receipt to the subdivider upon receipt of the Final Plan application.

H. \*-Upon determination that a complete Final Plan application has been submitted for review, the Board shall issue a dated receipt to the subdivider.

\*-If the Board decides to hold a public hearing, it shall hold the hearing within *thirty days* of receipt of a complete application, and shall publish notice of the date, time and place of the hearing in a newspaper of general circulation in the municipality at least twice, the date of the first publication to be at least *seven days* prior to the hearing.

I. \*- Within *thirty days* of a public hearing, or within *sixty days* of receipt of a complete application, if no hearing is held, or within another time limit as may be otherwise

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ARRICLE IV-B ADMINISTRATIVE PROCEDURE  
MAJOR SUBDIVISLON

mutually agreed to by the Board and the subdivider, the Board shall make findings of fact, and conclusions relative to the standards contained in Title 30-A M.R.S.A. ss.4404, and in this ordinance. If the Board finds that all standards of the Statute, and this ordinance have been met, they shall approve the Final Plan. If the Board finds that any standards of the Statute or this ordinance have not been met, the Board shall either deny the application, or approve the application with conditions, to ensure all of the standards will be met by the subdivision. The reasons for any conditions shall be stated in the records of the Board.

- J. #- Any aggrieved party may appeal any Board decision within *thirty days* of findings to the Board of Appeals.

# denotes Subdivider

\* denotes Board

ARTICLE V PREAPPLICATION

**5.1 Procedure.**

- A. Applicant presentation and submission of sketch plans.
- B. Question and answer period. Board makes specific suggestions to be incorporated by the applicant into subsequent submissions.
- C. Scheduling of on-site inspection.

**5.2 Submission.** The Pre-application Sketch Plan shall show, in simple sketch form, the proposed layout of roads, lots, buildings and other features in relation to existing conditions. The Sketch Plan, which may be a free-hand penciled sketch, shall be supplemented with general information to describe or outline the existing conditions of the site and the proposed development. It is recommended that the sketch plan be superimposed on or accompanied by a copy of the Assessor's Map(s) on which the land is located. The Sketch Plan shall be accompanied by a copy of a portion of the 7.5 min. U.S.G.S. topographic map of the area showing the outline of the proposed subdivision.

**5.3 Rights not Vested.** The submittal or review of the pre-application sketch plan shall not be considered the initiation of the review process for the purposes of bringing the plan under the protection of Title 1, X.R.S.A., ss.302.

**ARTICLE VI MINOR SUBDIVISIONS**

**6.1 General.** The Board may require, where it deems it necessary for the protection of the public health, safety, and welfare, that a Minor Subdivision comply with all or any of the submission requirements for a Major Subdivision.

**6.2 Procedure.**

- A. The Final Plan shall include any recommendations made by the Board.
- B. The applications for Final Plan approval for Minor Subdivision shall be accompanied by a non-refundable application fee of \$500.0 (1) payable to the municipality.
- C. The subdivider, or his/her representative, shall attend the meeting of the Board to discuss the Final Plan.

**6.3 Submissions.**

- A. The subdivision plan for a Minor Subdivision shall consist of two reproducible, stable based transparent originals, one to be recorded at the Registry of Deeds, the other to be filed at the Municipal office. Three copies of all maps or drawings, drawn to a scale of not more than one hundred feet to the inch, shall be submitted. 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. Plans shall not be larger than 24 by 36 inches in size, and shall have a margin of two inches outside of the border lines on the left side for binding and a one inch margin outside the border along the remaining sides. Space shall be provided for endorsement by the Board. Three copies of all information accompanying the plan shall be submitted.

**The application for approval of a Minor 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 the Assessor's Map and Lot numbers.
- 2. Verification of right, title, or interest in the property.
- 3. A field survey of the boundary lines of the tract, giving complete descriptive data bearings and distances, made and certified by a licensed land surveyor. The corners of the

ARTICLE VI MINOR SUBDIVISIONS

tract shall be located on the ground and marked by monuments. The plan shall indicate the type of monument to be set or found at each lot corner. All survey work shall be done in accordance with the State Board of Regulations for Land Surveyors Standards Title 32 Chapter 24 (1985).

4. A copy of the deed from which the survey was based. A copy of all deed restrictions, easements, rights-of-ways, or other encumbrances currently affecting the property.
5. A copy of any deed restrictions intended to cover all or part of the lots in the subdivision.
6. A copy of the subsurface wastewater disposal system test pit analyses for all lots, taken and prepared by a Licensed Site Evaluator. A map showing the location of all test pits dug on the site shall be submitted.
7. Evidence of adequate ground water supply and quality shall be submitted.
8. The date the Plan was prepared, north point, graphic map scale, names and addresses of the record owner, volume and page numbers of current deed, subdivider, and individual or company who prepared the plan, and the names of current adjoining property owners.
9. A copy of the portion of the Penobscot County Soil Survey covering the subdivision. The Board may require the submittal of a more intensive soils analysis to verify the suitability of the soil conditions for the intended uses.
10. The number of acres within the proposed subdivision, location and length of property lines, existing buildings, watercourses, vegetative cover type, and other essential existing physical features.
11. Contour lines at the interval specified by the Planning Board, showing elevations in relation to Mean Sea Level.
12. If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the 100year flood elevation shall be delineated on the plan.

**6.3 Approval and Filing.**

- A. Prior to any division or development of the subdivision, the following approvals shall be obtained by the applicant in writing, where appropriate:
  1. Maine Department of Environmental Protection, under the Site

ARTICLE VI MINOR SUBDIVISIONS

Location of Development Act, Great Ponds Act, Fresh Water Wetlands Act, Alteration of Streams or Rivers Act, or if a Wastewater Discharge License is needed.

2. Maine Department of Human Services, if the subdivider proposes to provide a central water supply system.
  3. Maine Department of Human Services, if a centralized or shared subsurface sewage disposal system(s) is to be utilized.
- B. Upon findings of fact and determination that all standards in Title 30-A M.R.S.A. ss.4404, and this ordinance have been met, and upon voting to approve the subdivision the Board shall sign the Final Plan. The Board shall specify in writing its findings of facts and reasons for any particular conditions or denial. One copy of the signed plan shall be retained by the Board as part of its permanent records. One copy of the signed plan shall be forwarded to the Tax Assessor. One 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.
- 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, except in accordance with Article IX. The Board shall make findings that the revised plan meets the standards of Title 30-A M.R.S.A. ss.4404, and this ordinance. In the event that a Plan is recorded without complying with this requirement, it shall be considered null and void, and the Board may institute proceedings to have the Plan stricken from the records of the Registry of Deeds.

ARTICLE VII PRELIMINARY PLAK FOR MAJOR SUBDIVISIONS

**7.1 Procedure.**

- A. All applications for Preliminary Plan approval for a Major Subdivision shall be accompanied by a non-refundable application fee of \$100 (1) per lot or dwelling unit, payable by check to the Town of Dixmont. In addition, the applicant shall pay a fee of \$100 (1) per lot or dwelling unit to be deposited in a special account designated for that subdivision application, to be used by the Planning Board for hiring independent consulting services to review the application. If the balance in this special account shall be drawn down by 75%, the Board shall notify the applicant, and require that an additional \$50 per lot or dwelling unit be deposited by the applicant. The Board shall continue to notify the applicant and require an additional \$50 (1) per lot or dwelling unit be deposited as necessary whenever the balance of the account is drawn down by 75% of the original deposit. Any balance in the special account remaining after a decision on the final plan application by the Board shall be returned to the applicant.
- B. The subdivider, or his/her representative, shall attend the meeting of the Board to discuss the Preliminary Plan.
- C. When granting approval to a Preliminary Plan, the Board shall state the conditions of such approval, if any, with respect to:
1. The specific changes which it will require in the Final Plan;
  2. The character and extent of the required improvements for which waivers may have been requested and which in the Board's opinion may be waived without jeopardy to the public health, safety, and general welfare; and
  3. The amount of all performance guarantees which it will require as prerequisite to the approval of the Final Plan.
- D. Approval of a Preliminary Plan shall not constitute approval of 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 of the Board upon fulfillment of the requirements of this ordinance and the conditions of preliminary approval, if any. Prior to the approval of the Final Plan, the Board may require additional changes as a result of the further study of the subdivision or as a result of new information received.

ARTICLE VII PRELIMINARY PLAN FOR MAJOR SUBDIVISIONS

7.2 Submissions

- A. Location Map. The Preliminary Plan shall be accompanied by a Location Map adequate to show the relationship of the proposed subdivision to the adjacent properties, and to allow the Board to locate the subdivision in Dixmont. The location map shall show:
1. Existing subdivisions in the proximity of the proposed subdivision.
  2. Locations and names of existing and proposed roads.
  3. Boundaries and designations of zoning districts.
  4. An outline of the proposed subdivision and any remaining portion of the owner's property if the Preliminary Plan submitted covers only a portion of the owner's entire contiguous holding.
- B. Preliminary Plan. The Preliminary Plan shall be submitted in three copies of one or more maps or drawings which may be printed or reproduced on paper, with all dimensions shown in feet and decimals of a foot. The Preliminary Plan shall be drawn to a scale of not more than one hundred feet to the inch. The Board may allow plans for subdivisions containing more than one hundred acres to be drawn at a scale of not more than two hundred feet to the inch provided all necessary detail can easily be read. In addition, one copy of the Plan(s) reduced to a size of 8 1/2 by 11 inches or 11 by 17 inches, and all accompanying information shall be furnished to each Board member no less than seven days prior to the meeting. The following information shall either be shown on the Preliminary Plan or accompany the application for preliminary approval:
1. Proposed name of the subdivision and the name of the municipality(s) in which it is located, plus the Tax Assessor's Map and Lot numbers.
  2. Verification of right, title, or interest in the property.
  3. An actual field survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor. The corners of the tract shall be located on the ground and marked by monuments.
  4. A copy of any covenants or deed restrictions intended to cover all or part of the lots in the subdivision.

ARTICLE VII PRELIMINARY PLAN FOR MJOR SUBDIVISIONS

5. A copy of the deed from which the survey was based. A copy of all covenants or deed restrictions, easements, rights-of-way, or other encumbrances currently affecting the property.
6. Contour lines at the interval specified by the Planning Board, showing elevations in relation to Mean Sea Level.
7. The number of acres within the proposed subdivision, location of property lines, existing buildings, watercourses, vegetative cover type, and other essential existing physical features.
8. Subsurface sewage disposal system test pit analyses, prepared by a Licensed Site Evaluator shall be provided. A map showing the locations of all test pits dug on the site shall be submitted.
9. Indication of the type of water supply system(s) to be used in the subdivision.
10. The date the Plan was prepared, magnetic north point, graphic map scale, names and addresses of the record owner, subdivider, and individual or company who prepared the plan. If the subdivider is not the owner of the property, evidence of the subdivider's right, title or interest to the property.
11. The names and addresses of owners of record of adjacent property, including any property directly across an existing public street from the subdivision.
12. The location of any zoning boundaries affecting the subdivision.
13. The location and size of existing and proposed sewers, water mains, culverts, and drainage ways on or adjacent to the property to be subdivided.
14. The location, names, and present widths of existing and proposed roads, highways, easements, building lines, parks, and other open spaces on or adjacent to the subdivision.
15. The proposed lot lines with approximate dimensions and lot areas.
16. All parcels of land proposed to be dedicated to public use and the conditions of such dedication.
17. The location of any open space to be preserved and a description of proposed improvements and its management.



ARTICLE VII PRELIMINARY PLAN FOR MAJOR SUBDIVISIONS

18. A copy of that portion of the Penobscot County Soil Survey covering the subdivision. When the medium intensity soil survey shows soils which are generally unsuitable for the uses proposed, the Board may require the submittal of a class A or class B High Intensity Soil Survey or a report by a Registered Soil Scientist or Registered Professional Engineer experienced in geotechnics, indicating the suitability of the soil conditions for those uses.
19. A copy of a U.S.G.S. 7.5 min. topographic map covering the subdivision.
20. If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the 100year flood elevation shall be delineated on the plan.
21. The Board may require that a hydrogeologic assessment be submitted if it appears that the proposed subdivision could cause groundwater pollution. It shall be prepared in accordance with Article XI-B Section 11B.9A by a Certified Geologist or Registered Professional Engineer, experienced in hydrogeology, when the subdivision is not served by public sewer and
  - a. Any part of the subdivision is located over a sand and gravel aquifer, as shown on a map entitled "Hydrogeologic Data for Significant Sand and Gravel Aquifers", by the Maine Geological Survey.
  - b. The subdivision has an average density of less than 100,000 square feet per dwelling unit.

ARTICLE VIII FINAL PIAAN FOR MAJOR SUBDIVISIONS

## 8.1 Procedure.

- A. The Final Plan shall approximate the layout shown on the Preliminary Plan, plus any recommendations made by the Board.
- B. All applications for Final Plan approval for Major Subdivision shall be accompanied by a nonrefundable application fee of \$100@ per lot or dwelling unit payable by check to the municipality.
- C. The subdivider or his/her representative, shall attend the meeting of the Board to discuss the Final Plan.
- D. The Board shall notify the Road Commissioner, School Superintendent, Police Chief and Fire Chief of the proposed subdivision, the number of dwelling units proposed, the length of roadways, and the size and construction characteristics of any multi-family, commercial or industrial buildings. The Board shall request that these officials comment upon the adequacy of their department's existing capital facilities to service the proposed subdivision.
- E. Before the Board grants approval of the Final Plan, the subdivider shall meet the performance guarantee requirements contained in Article XIII-B.
- F. If the subdivision is located in more than one municipality, the Board shall have a joint meeting with the Planning Board of the adjacent municipality to discuss the Plan.
- G. If the Board finds that all standards of Title 30-A M.R.S.A. §4404 and this ordinance have been met, they shall approve the Final Plan. If the Board finds that any of the standards of the Statute or this ordinance have not been met, the Board shall either deny the application or approve the application with conditions to ensure all of the standards will be met by the subdivision. The reasons for any conditions shall be stated in the records of the Board.

## 8.2 Submissions.

The Final Plan shall consist of one or more maps or drawings drawn to a scale of not more than one hundred feet to the inch. Plans for subdivisions containing more than one hundred acres may be drawn at a scale of not more than two hundred feet to the inch provided all necessary detail can easily be read. Plans shall be no larger than 24 by 36 inches in size, and shall have

ARTICLE VIII FINAL PLAN FOR MAJOR SUBDIVISIONS

shall have a margin of two inches outside of the border line on the left side for binding and a one inch margin outside the border along the remaining sides. Space shall be reserved on the plan for endorsement by the Board. Two reproducible, stable based transparent originals, one to be recorded at the Registry of Deeds ' the other to be filed at the Municipal Offices, and three copies of the plan shall be submitted. The subdivider may instead submit one reproducible stable based transparent original of the Final Plan, and one Recording Plan with three copies of the Final Plan. In addition, one copy of the Final Plan, reduced to a size of 8 1/2 by 11 inches or 11 by 17 inches, and all accompanying information shall be furnished to each Board member no less than seven days prior to the meeting.

The application for approval of the Final Plan shall include the following information.

- A. Proposed name of the subdivision and the name of the municipality(s) in which it is located, plus the Tax Assessor's Map and Lot numbers.
- B. An actual field survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor. The corners of the tract shall be located on the ground and marked by monuments. The plan shall indicate the type of monument set or found at each lot corner. All survey work shall be done in accordance with the State Board of Regulations for Land Surveyors Standards Title 32 Chapter 24 (1985).
- C. The number of acres within the proposed subdivision, location of property lines, existing buildings, watercourses, and other essential existing physical features.
- D. Indication of the type of sewage disposal to be used in the subdivision.
- E. Indication of the type of water supply system(s) to be used in the subdivision.
  - 1. A written statement shall be submitted from the Fire Chief approving all hydrant locations or other fire protection measures deemed necessary.
  - 2. Evidence of adequate ground water supply and quality shall be submitted.
- F. The date the Plan was prepared, magnetic north point, graphic map scale, names and addresses of the record owner, volume and page numbers of deed, subdivider, and individual or company who prepared the plan.

ARTICLE VIII FINAL PLAN FOR MAJOR SUBDIVISIONS

- G. The location of any zoning boundaries affecting the subdivision.
- H. The location and size of existing and proposed sewers, water mains, culverts, and drainage ways on or adjacent to the property to be subdivided.
- I. The location, names, and present widths of existing and proposed roads, highways, easements, building lines, parks, and other open spaces on or adjacent to the subdivision. The plan shall contain sufficient data to allow the location, bearing and length of every road, 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 length of all straight lines, the deflection angles radii, length of curves and central angles of curves, tangent distances and tangent bearings for each road shall be included.
- J. The Board may require a soil erosion and sedimentation control plan if the subdivision has potential for erosion or impairing water quality. It shall be prepared in accordance with the standards contained in the latest revised edition of the Environmental *Quality Handbook* published by the U. S. Soil Conservation Service.
- K. The Board may require a plan for the disposal of surface waters if the proposed subdivision appears that it will increase drainageway flow rates significantly, or if the proposed subdivision will create new concentrated flows. It shall be prepared by a Registered Professional Engineer, in accordance with the latest revised edition of Technical Release 55, *Urban Hydrology for Small Watersheds*, published by the U. S. Soil Conservation Service.
- L. All parcels of land proposed to be dedicated to public use and the conditions of such dedication. Written offers of cession to the municipality of all open spaces shown on the Plan, and copies of agreements or other documents showing the manner on which open spaces to be retained by the developer or lot owners are to be maintained shall be submitted. If open space or other land is to be offered to the municipality, or other organization dedicated to the preservation of open space, written evidence that the municipal officers are satisfied with the legal sufficiency of the written offer of cession or transfer shall be included.
- M. A list of construction items with cost estimates that will be completed by the developer prior to the sale of lots. The

ARTICLE VIII FINAL PLAN FOR MAJOR SUBDIVISIONS

developer shall provide an estimate of the net increase in taxable assessed valuation at the completion of the construction of the subdivision.

- N. If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation shall be delineated on the plan.

8.3 Final Approval and Filing.

- A. Prior to any division or development of the subdivision, the following approvals shall be obtained by the applicant in writing, where appropriate:
1. Maine Department of Environmental Protection, under the Site Location of Development Act, Great Ponds Act, Fresh Water Wetlands Act, Alteration of Streams or Rivers Act, or if a Wastewater Discharge License is needed.
  2. Maine Department of Human Services, if the subdivider proposes to provide a central water supply system.
  3. Maine Department of Human Services, if a centralized or shared subsurface sewage disposal system(s) is to be utilized.
- B. Upon findings of fact and determination that all standards in Title 30-A M.R.S.A. §4404, and this ordinance have been met, and upon voting to approve the subdivision the Board shall sign the Final Plan. The Board shall specify in writing its findings of facts, and reasons for any particular conditions or denial. One copy of the signed plan shall be retained by the Board as part of its permanent records. One copy of the signed plan shall be forwarded to the Tax Assessor. One 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.
- C. At the time the Board grants Final Plan approval, it may permit the Plan to be divided into two or more phases subject to any conditions the Board deems necessary in order to insure the orderly development of the Plan. If any municipal or quasi-municipal department head notified of the proposed subdivision informs the Board that their department does not have adequate capital facilities to service the subdivision the Board may require the Plan to be divided into two or more phases subject to any conditions the Board deems necessary in order to allow the orderly planning, financing and provision of public services to the subdivision. If the superintendent

ARTICLE VIII FINAL PLAN FOR MAJOR SUBDIVISIONS

of schools indicates that there is less than 20% excess classroom capacity existing in the school which will serve the subdivision, considering previously approved but not built subdivisions, the Board may require the Plan to be divided into phases to prevent classroom overcrowding.

- D. No changes, erasures, modifications, or revisions shall be made in any Final Plan after, approval has been given by the Board and endorsed in writing on the Plan, unless the revised Final Plan is first submitted and the Board approves any modifications, except in accordance with Article IX. The Board shall make findings that the revised plan meets the standards of Title 30-A M.R.S.A. ss. 4404, and this ordinance. In the event that a Plan is recorded without complying with this requirement, it shall be considered null and void, and the Board may institute proceedings to have the Plan stricken from the records of the Registry of Deeds.
- E. The approval by the Board of a subdivision plan shall not be deemed to constitute or be evidence of any acceptance by the municipality of any road, easement, or other open space shown on such plan. When a park, playground, or other recreation area shall have been shown on the plan to be dedicated to the 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 a recordable covenant covering future deed and title, dedication, and provision for the cost of grading, development, equipment, and maintenance of any such dedicated area.
- F. Failure to commence construction of the required improvements within 18 months 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.

ARTICLE IX REVISIONS TO APPROVED PLANS

9.1 Procedure.

An applicant for a revision to a previously approved plan shall, at least seven days prior to a scheduled meeting of the Board, request to be placed on the Board's agenda. If the revision involves the creation of additional lots or dwelling units, the procedures for preliminary plan approval @ shall be followed. If the revision involves only modifications of the approved plan, without the creation of additional lots or dwelling units, the procedures for final plan approval shall be followed.

9.2 Submissions.

The applicant shall submit a copy of the approved plan, as well as three copies of the proposed revisions. The application shall also include enough supporting information to allow the Board to make a determination that the proposed revisions meet the standards of this ordinance.

9.3 Scope of Review

The Board's scope of review shall be limited to those portions of the plan which are proposed to be changed.

ARTICLE X - ENFORCEMENT

## 10.1 Inspection of Required Improvements

- A. At least five days prior to commencing each major phase of construction of required improvements, the subdivider or builder shall notify the Code Enforcement officer in writing of the time when he/she proposes to commence construction of such improvements, so that the Municipal Officers can cause inspection to be made by a qualified individual to assure that all municipal specifications and requirements shall be met during the construction of required improvements, and to assure the satisfactory completion of improvements and utilities required by the Board. The costs of inspection of required improvements shall be borne by the developer, and the Municipal officers may require a deposit to insure payment of the same.
- B. If the inspecting official finds, upon inspection of the improvements, that any of the required improvements have not been constructed in accordance with the plans and specifications filed by the subdivider, he/she shall so report in writing to the Municipal Officers, Planning Board, and the subdivider or builder. The Municipal Officers shall take any steps necessary to preserve the municipality's rights.
- C. If at any time before or during the construction of the required improvements, it appears to be necessary or desirable to modify the required improvements, the inspecting official is authorized to approve minor modifications due to unforeseen circumstances such as encountering hidden outcrops of bedrock, natural springs, etc. The inspecting official shall issue any approval under this section in writing and shall transmit a copy of the approval to the Board. Revised plans shall be filed with the Town. For major modifications, such as relocation of rights-of-way, property boundaries, changes of grade by more than 1%, etc., the subdivider shall obtain permission to modify the plans from the Board.
- D. At the close of each construction season the Town may, at the expense of the subdivider, have the site inspected by a qualified individual. By December 1 of each year during which construction was done on the site. The inspector shall submit a report to the Board based on that inspection, addressing whether storm water and erosion control measures (both temporary and permanent) are in place, are properly installed, and appear adequate to do the job they were designed for. The report shall also include a discussion and recommendations on any problems which were encountered.



ARTICLE X ENFORCEMENT

- E. Upon completion of road construction as set forth in Article XII, Road and Storm Drainage Design and Construction Standards, and prior to a vote by the Municipal Officers to submit a proposed town way to a town meeting, a written certification signed by a professional engineer registered in the State of Maine shall be submitted to the Municipal officers at the expense of the applicant, certifying that the proposed town way meets or exceeds the design and construction requirements of this ordinance-.. If there are any underground utilities, the servicing utility shall certify in writing that they have been installed in a manner acceptable to the utility.
- F. The subdivider or builder shall be required to maintain all improvements and provide for snow removal on roads until acceptance of the improvements by the municipality.

10.2 Violations and Enforcement.

- A. No plan of a division of land within the municipality which would constitute a subdivision shall be recorded in the Registry of Deeds until a Final Plan has been approved by the Board in accordance with this ordinance.
- B. No person, firm, corporation or other legal entity may convey, offer to convey or lease any land or divide any structures in a subdivision which has not been approved by the Board and recorded in the Registry of Deeds.
- C. No person, firm, corporation or other legal entity may convey, offer to convey or lease any land or divide any structures in a subdivision which is not shown on the Final Plan as a separate lot.
- D. No public utility, water district, sanitary district, or any utility company of any kind shall serve any lot in a subdivision for which a Final Plan has not been approved by the Board.
- E. Development of a subdivision without Board approval shall be a violation of law. Development includes grading or construction of roads, grading of land or lots, or construction of buildings which require a Final Plan approved as provided in this ordinance and recorded in the Registry of Deeds.
- F. No lot in a subdivision may be sold, leased, or otherwise conveyed before the road upon which the lot fronts is completed in accordance with this ordinance up to and including the entire frontage of the lot. No unit in a multifamily development shall be occupied before the road upon

ARTICLE X ENFORCERMT

which the unit is accessed is completed in accordance with this ordinance.

- G. Any person, firm, corporation or other legal entity who violates any of the provisions of above paragraphs B, C, E, or F shall be punished by a fine of not less than \$100 or more than \$2500 for each such violation. The municipality may institute proceedings to enjoin the violation of any of the provisions of this article, and may collect attorneys fees and court costs if it is the prevailing party.

ARTICLE XI-A - General Standards - Minor Subdivision

In reviewing applications for a subdivision, the board shall consider the following general standards and make findings that each has been met prior to the approval of a Final Plan. In all instances the burden of proof shall be upon the applicant.

11A.1 Conformance with Comprehensive Plan. All proposed subdivisions shall be in conformity with the Comprehensive Plan or policy statement of Dixmont, and with the provisions of all pertinent state and local codes and ordinances.

11A.2 Retention of Open Spaces and Natural or Historic Features.

- A. The board may require that the development plans include a landscape plan that will show the preservation of unique or locally significant trees, the replacement of trees and vegetation, graded contours, streams and the preservation of scenic, historic or environmentally significant areas.
- B. If the proposed subdivision contains any identified historical or archeological sites, or any areas identified in the Comprehensive Plan or by the Maine Critical Areas Program as rare and irreplaceable natural areas, these areas shall be included in the open space, and suitably protected by appropriate covenants and management plans.
- B. Any public rights of access to the shoreline of a water body shall be maintained by means of easements or rights-of-way, or should be included in the open space, with provisions made for continued public access.

11A.3 Land Not Suitable for Development. The following lands shall not be included in the calculations of lot area to meet the requirements of the Minimum Lot Size Law 12 MRSA 4807 thru 4807G.

- A. Land which is situated below the normal high water mark of any water body.
- B. Land which is located within the 100 year flood plain as identified by the Federal Emergency Management Agency, or the Department of Housing and Urban Development, Flood Insurance Administration, unless the subdivider shows proof through the submittal of materials prepared by a Registered Land Surveyor which show that the property in question lies at least two feet above the 100 year flood level. The elevation of filled or made land shall not be considered.

ARTICLE XI-A - General Standards - Minor Subdivision

- C. Land which is part of a right-of-way, or easement, including utility easements.
- D. Land which has a water table within ten inches of the surface for at least three months of the year as identified by the Penobscot County Soil Survey. The Board may use such lands in the lot area calculations if the lots are to be deed restricted to prohibit buildings with basements or require basement floor-elevations one foot above the seasonal water table, and if domestic sewage can be treated safely based on all state and local plumbing codes.
- E. Land that has been created by filling or draining a pond or wetland.

11A.4 Lots.

- A. All lots shall meet the minimum requirements of all pertinent codes and ordinances for the Town of Dixmont.
- B. When lots have frontage on two or more roads, the plan shall indicate vehicular access. It is strongly recommended that access be located on the less traveled way.
- C. If a lot on one side of a stream, road or other similar barrier fails to meet the minimum requirements for lot size, it may not be combined with a lot on the other side of the stream or road to meet the minimum lot size.
- D. The ratio of lot length to width shall not be more than four to one. Odd shaped lots in which narrow strips are joined to other parcels in order to meet minimum lot size requirements are prohibited.

11-A.5 Required Improvements. The following improvements are required for all subdivisions unless waived by the Board in accordance with provisions of this ordinance.

- A. All subdivision, and lot boundary corners and angle points shall be marked by suitable monumentation.
- B. Dug wells and drilled wells shall be constructed so as to prevent infiltration of surface water into the well.
- C. If a central water supply system is provided by the subdivider, the location and protection of the source, and the design, construction and operation of the system shall conform to the standards of the Maine Rules

ARTICLE XI-A - General Standards - Minor Subdivision

Relating to Drinking Water (10-144 A.C.M.R. 231)

- D. The developer shall submit evidence of soil 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. In addition, on lots in which the limiting factor has been identified as being within 24 inches of the surface, a secondary site with suitable soils shall be shown on the plan and restricted so as not to be built upon.
- E. In no instance shall a disposal area be permitted on soils or on a lot which requires a New System Variance from the Subsurface Wastewater Disposal Rules.

11A.6 Land Features

- A. 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.
- B. Existing vegetation shall be left intact, except for normal thinning, landscaping, and cutting trees for sunlight access, to prevent soil erosion and to minimize storm water runoff.
- C. Tree cutting in the strip extending 100 feet inland from the normal high water mark of any waterbody shall be done in such a manner to preserve the lands natural beauty, prevent any erosion and to preserve the natural fish habitat with adequate shading.

11A.7 Dedication and Maintenance of Common Open Space and Services

- 1. All common land, facilities and property shall be owned jointly or in common by the owners of the dwelling units by means of a home-owners association, by an association which has as its principal purpose the conservation or preservation of land in essentially its natural condition, or by the municipality.
- 2. Further subdivision of the common land or its use for other than non-commercial recreation or conservation purposes, except for easements for underground utilities, shall be prohibited. Structures and buildings accessory to non-commercial recreation or conservation uses may be erected on the common land.

ARTICLE XI-A - General Standards - Minor Subdivision

3. The common open space shall be shown on the Final Plan with appropriate notation on the plan to indicate that it shall not be used for future building lots, and a part or all of the common open space may be dedicated for acceptance by the municipality.
4. The by-laws of the proposed homeowners association shall specify maintenance responsibilities and shall be submitted to the Board prior to Final Plaiv approval.
5. Covenants for mandatory membership in the homeowners association setting forth the owners rights, interests, and privileges in the association and the common property, shall be reviewed by the Board and included in the deed for each lot or dwelling.
6. The homeowners association shall have the responsibility of maintaining the common property or facilities.
7. The association shall levy annual charges against all owners of dwelling units to defray the expenses connected with the maintenance of common property and tax assessments.
- S. The developer or subdivider shall maintain control of the common property, and be responsible for its maintenance until development sufficient to support the association has taken place.

13LA.8 Construction in Flood Hazard Areas.

When any part of a subdivision is located in special flood hazard area as identified by the Federal Emergency Management Agency, or in any other flood prone areas, the plan shall indicate that all principal structures on lots in the subdivision shall be constructed with their lowest floor, including the basement, at least one foot above a 100-year flood elevation. Such a restriction shall be included in the deed to any lot which is included or partially included in the flood hazard, or flood prone area.

IIA.9 Impact on Ground Water.

- A. The following information shall be submitted unless otherwise stated by the planning board.
  1. A medium intensity soil survey map (or more detailed map) showing the basic soil types.
  2. Data on the existing ground water quality and quantity, either from test wells in the subdivision or

ARTICLE XI-A – General Standards -Minor Subdivision

from existing wells on neighboring properties. Projections of ground water quality shall be based on the assumption of drought conditions (assuming 60% of annual average precipitation).

3. A map showing the location of any subsurface wastewater disposal systems and drinking water wells within the subdivision and within 200 feet of the subdivision boundaries.

- B. No subdivision shall increase any contaminant concentration in the ground water to more than one half of the Primary Drinking Water Standards. No subdivision shall increase any contaminant concentration in the ground water to more than the Secondary Drinking Water Standards.

11.A.10 Road Access Control and Safety.

- A. A site distance of ten feet for each mile per hour of posted speed limit shall be maintained or provided in both directions. The site distance shall be determined with the front of a vehicle at least 10 feet behind the edge of the road shoulder.
- B. Access from a road shall slope no greater than 2% upward or downward from the road shoulder for at least 25 feet onto the property.

11A.11 Storm Water Management Design Standards

- A. Adequate provision shall be made for disposal of all storm water generated within the subdivision, and any drained ground water through a management system of swales, culverts, and underdrains. The storm water management system shall be designed to conduct storm water flows to existing watercourses.
  - 1. Where a subdivision is traversed by a stream, or surface water drainageway, or where the board feels that surface water runoff to be created by the subdivision should be controlled, easements or drainage rights-of-way with swales, culverts, or other means of channelling surface water shall be provided.
- B. The storm water management system shall be designed to accommodate upstream drainage, taking into account existing conditions and approved or planned developments not yet built and shall include a surplus design capacity

ARTICLE XI-A - General Standards - Minor Subdivision

factor of 25% for potential increases in upstream runoff.

- C. Downstream drainage requirements shall be studied to determine the effect of the proposed subdivision. The storm drainage shall not overload existing or future planned storm drainage systems downstream from the subdivision. The subdivider shall be responsible for financing any improvements to existing drainage systems required to handle the increase storm flows.
- D. Outlets, both surface and subsurface, shall be stabilized against soil erosion by stone riprap or other suitable materials to reduce storm water velocity.



ARTICLE XI-B - General Standards - Major Subdivision

In reviewing applications for a subdivision, the board shall consider the following general standards and make findings that each has been met prior to the approval of a Final Plan. In all instances the burden of proof shall be upon the applicant.

11B.1 Conformance with Comprehensive Plan. All proposed subdivisions shall be in conformity with the Comprehensive Plan or policy statement of Dixmont, and with the provisions of all pertinent state and local codes and ordinances.

11B.2 Retention of Open Spaces and Natural or Historic Features.

- A. The plan shall, by notes on the final plan and deed restrictions, limit the clearing of trees to those areas designated on the plan.
- B. The Board may require the reservation of between five and ten percent of the area of the subdivision as open space in order to provide for the recreational needs of the occupants of the subdivision or to maintain the scenic or natural beauty of the area. The Board may instead require a payment at fair market value of the stated percentage be contributed to a municipal open space or recreation land acquisition fund.<sup>46</sup> Land reserved for open space purposes shall be of a character, configuration and location suitable for the particular use intended.
- C. Reserved land acceptable to the Board and subdivider may be dedicated to the municipality, or other organization dedicated to the preservation of open space, as a condition of approval.
- D. The board may require that the development plans include a landscape plan that will show the preservation of unique or locally significant trees, the replacement of trees and vegetation, graded contours, streams and the preservation of scenic, historic or environmentally significant areas.
- E. If the proposed subdivision contains any identified historical or archeological sites, or any areas identified in the Comprehensive Plan or by the Maine Critical Areas Program as rare and irreplaceable natural areas, these areas shall be included in the open space, and suitably protected by appropriate covenants and management plans.

ARTICLE XI-B - General Standards - Major Subdivision

F. Any public rights of access to the shoreline of a water body shall be maintained by means of easements or rights-of-way, or should be included in the open space, with provisions made for continued public access.

11B.3 Land Not Suitable for Development. The following lands shall not be included in the calculations of lot area to meet the requirements of the Minimum Lot Size Law 12 MRSA 4807 thru 4807G.

- A. Land which is situated below the normal high water mark of any water body.
- B. Land which is located within the 100 year flood plain as identified by the Federal Emergency Management Agency, or the Department of Housing and Urban Development, Flood Insurance Administration, unless the subdivider shows proof through the submittal of materials prepared by a Registered Land Surveyor which shows that the property in question lies at least two feet above the 100 year flood level. The elevation of filled or made land shall not be considered.
- C. Land which is part of a right-of-way, or easement, including utility easements.
- D. Land which has a water table within ten inches of the surface for at least three months of the year as identified by the Penobscot County Soil Survey. The Board may use such lands in the lot area calculations if the lots are to be deed restricted to prohibit buildings with basements or require basement floor elevations one foot above the seasonal water table, and if domestic sewage can be treated safely based on all state and local plumbing codes.
- E. Land that has been created by filling or draining a pond or wetland.

11B.4 Lots.

- A. All lots shall meet the minimum requirements of all pertinent codes and ordinances-for the Town of Dixmont.
- B. When lots have frontage on two or more roads, the plan shall indicate vehicular access. It is strongly recommended that access be located on the less traveled way.
- C. If a lot on one side of a stream, road or other similar

ARTICLE XI-B - General Standards - Major Subdivision

barrier fails to meet the minimum requirements for lot size, it may not be combined with a lot on the other side of the stream or road to meet the minimum lot size.

- D. The ratio of lot length to width shall not be more than four to one. Odd shaped lots in which narrow strips are joined to other parcels in order to meet minimum lot size requirements are prohibited.

11B.5 Utilities.

- A. The size, type and location of street lights, electric and telephone, and other utilities shall be shown on the plan and approved by the Board.

11B.6 Required Improvements. The following improvements are required for all subdivisions unless waived by the Board in accordance with provisions of this ordinance.

- A. All subdivision, and lot boundary corners and angle points shall be marked by suitable monumentation.
- B. Dug wells and drilled wells shall be constructed so as to prevent infiltration of surface water into the well.
- C. If a central water supply system is provided by the subdivider, the location and protection of the source, and the design, construction and operation of the system shall conform to the standards of the Maine Rules Relating to Drinking Water (10-144 A.C.M.R. 231)
- D. The developer shall submit evidence of soil 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. In addition, on lots in which the limiting factor has been identified as being within 24 inches of the surface, a secondary site with suitable soils shall be shown on the plan and restricted so as not to be built upon.
- E. In no instance shall a disposal area be permitted on soils or on a lot which requires a New System variance from the Subsurface Wastewater Disposal Rules.

11B.7 Land Features

- A. 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

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excavations.

- B. Existing vegetation shall be left intact, except for normal thinning, landscaping, and cutting trees for sunlight access, to prevent soil erosion and to minimize storm water runoff.
- C. Tree cutting in the strip extending 100 feet inland from the normal high water mark of any water body shall be done in such a manner to preserve the lands natural beauty, prevent any erosion and to preserve the natural fish habitat with adequate shading.

13B.8 Dedication and Maintenance of Common open Space and Services

- 1. All common land, facilities and property shall be owned jointly or in common by the owners of the dwelling units by means of a home-owners association, by an association which has as its principal purpose the conservation or preservation of land in essentially its natural condition, or by the municipality.
- 2. Further subdivision of the common land or its use for other than non-commercial recreation or conservation purposes, except for easements for underground utilities, shall be prohibited. Structures and buildings accessory to non-commercial recreation or conservation uses may be erected on the common land.
- 3. The common open space shall be shown on the Final Plan with appropriate notation on -the plan to indicate that it shall not be used for future building lots, and a part or all of the common open space may be dedicated for acceptance by the municipality.
- 4. The by-laws of the proposed homeowners association shall specify maintenance responsibilities and shall be submitted to the Board prior to Final Plan approval.
- 5. Covenants for mandatory membership in the homeowners association setting forth the owners rights, interests, and privileges in the association and the common property, shall be reviewed by the Board and included in the deed for each lot or dwelling.
- 6. The homeowners association shall have the responsibility of maintaining the common property or facilities.
- 7. The association shall levy annual charges against all

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owners of dwelling units to defray the expenses connected with the maintenance of common property and tax assessments.

- S. The developer or subdivider shall maintain control of the common property, and be responsible for its maintenance until development sufficient to support the association has taken place.

#### 11B.9 Construction in Flood Hazard Areas.

When any part of a subdivision is located in special flood hazard areas as identified by the Federal Emergency Management Agency, or in any other flood prone areas, the plan shall indicate that all principal structures on lots in the subdivision shall be constructed with their lowest floor, including the basement, at least one foot above a 100-year flood elevation. Such a restriction shall be included in the deed to any lot which is included or partially included in the flood hazard, or flood prone area.

#### 11B.10 Impact on Ground Water.

- A. If a hydrogeologic assessment is deemed necessary for submittal by the Board, the assessment shall contain at least the following information:
1. A medium intensity soil survey map (or more detailed map) showing the basic soil types.
  2. The depth to the water table at representative points throughout the subdivision.
  3. Drainage conditions throughout the subdivision.
  4. Data on the existing ground water quality and quantity, either from test wells in the subdivision or from existing wells on neighboring properties. Projections of ground water quality shall be based on the assumption of drought conditions (assuming 60% of annual average precipitation).
  5. An analysis and evaluation of the effect of the subdivision on ground water resources. In the case of residential developments, the evaluation shall, at a minimum, include a projection of post development nitrate-nitrogen concentrations at any wells within the subdivision, at the subdivision boundaries and at a distance of 1000 feet from potential contamination sources, whichever is a shorter distance.

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- A. A map showing the location of any subsurface wastewater disposal systems and drinking water wells within the subdivision and within 200 feet of the subdivision boundaries.
- B. No subdivision shall increase any contaminant concentration in the ground water to more than one half of the Primary Drinking Water Standards. No subdivision shall increase any contaminant concentration in the ground water to more than the Secondary Drinking Water Standards.
- C. If ground water contains contaminants in excess of the primary standards, the applicant shall demonstrate how water quality will be improved or treated.
- D. If ground water contains contaminants in excess of the secondary standards, the subdivision shall not cause the concentration of the parameters in question to exceed 150% of the ambient concentration.
- F. Subsurface waste water disposal systems and drinking water wells shall be constructed as shown on the map submitted with the assessment. If construction standards for drinking water wells are recommended in the assessment, these standards shall be included as a note on the Final Plan, and as restrictions on the deeds to the affected lots.

IIB.11 Road Access Control and Safety.

- A. Provision shall be made for vehicular access to the subdivision and circulation within the subdivision in such a manner as to safeguard against hazards to traffic and pedestrians in existing roads and within the subdivision, to avoid traffic congestion on any road and to provide safe and convenient circulation on public roads and within the subdivision.
  - 1. The road giving access to the subdivision and neighboring roads which can be expected to carry traffic to and from the subdivision shall have traffic carrying capacity and be suitably improved to accommodate the amount and types of traffic generated by the proposed subdivision.
  - 2. Where necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, provision shall be made for turning lanes, traffic directional islands, frontage roads, and traffic

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controls within public roads.

- B. Subdivision Access Design for Subdivisions entering Arterial roads. When the access to a subdivision is a road, the road design and construction standards of Article XII shall be met. Where there is a conflict between the standards in this section and the standards of Article XII, the stricter or more stringent shall apply-

- 1. Sight Distances. Accesses shall be designed and located to provide the required sight distance measured in each direction. Sight distances shall be measured from the drivers seat of a vehicle standing on that portion of the exit with the front of the vehicle a minimum of 10 feet behind the edge of the shoulder, with the height of the eye 3-1/2 feet, to the top of an object 4-1/2 feet above the pavement. A sight distance of ten feet for each mile per hour of posted speed limit shall be maintained or provided in both directions.

ARTICLE XII - Road and Storm Drainage Design and Construction  
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12.1 General Requirements.

- A. The Board shall not approve any subdivision plan unless proposed roads and storm water management systems are designed in accordance with any local ordinance or the specifications contained in this ordinance. Approval of the Final Plan by the Board, shall not be deemed to constitute or be evidence of acceptance by the municipality of any road or easement.
- B. The Board may require, as part of the Final Plan, detailed construction drawings showing a plan view, profile, and typical cross-section of the proposed roads and existing roads within 300 feet of any proposed intersections. The plans shall include the following information:
  - 1. Date, scale, and magnetic north point.
  - 2. Intersections of the proposed road with existing roads.
  - 3. Roadway and right-of-way limits including edge of pavement and edge of shoulder.
  - 4. Kind, size, location, material, profile and cross-section of all existing and proposed drainage structures and their location with respect to the existing natural waterways and proposed drainage ways.
  - 5. Complete curve data.
  - 6. Turning radii at all intersections.
  - 7. Centerline gradients.
  - 8. Locations of all existing and proposed overhead and underground utilities, to include but not be limited to water, sewer, electricity, telephone and lighting.
- C. Upon receipt of plans for a proposed public road the Board shall forward one copy to the Municipal Officers and the Road Commissioner for review and comment.
- D. Where the subdivider proposes improvements within existing public roads, the proposed design and



ARTICLE XII - Road and Storm Drain@ Design and Construction Standards - Major Subdivision

construction details shall be approved in writing by the Road Commissioner or the Maine Department of Transportation, as appropriate.

E. When any subdivision roads are to remain private roads, the following words shall appear in the recorded plan. "All private roads in the subdivision shall remain private roads to be maintained by the developer or the lot owners and shall not be accepted or maintained by the Town." Also, words of the same intent shall be included in the deeds of the affected lots in the subdivision.

12.2 Road Design Standards.

A. These design standards shall be met by all roads within subdivisions, and shall control the roadway, shoulders, drainage systems, culverts, and other appurtenances.

B. Roads shall be designed to discourage through traffic on minor roads within a residential subdivision.

C. Where a subdivision borders an existing narrow road (not meeting the width requirements of the standards for roads in this ordinance), the plan shall indicate reserved areas for widening or realigning the road marked "Reserved for Road Realignment (Widening) Purposes." Land reserved for such purposes may not be included in any lot, but shall be reserved to be deeded to the Municipality or State.

D. All changes in grade shall be connected by vertical curves in order to provide the following minimum stopping sight distances based on the road design speed.

Design speed	20	25	30	35 mph.
Stopping sight dist.	125	150	200	250 ft.

The stopping sight distance shall be calculated with a height of eye at 3.5 feet and the height of object at 0.5 feet.

E. The following road design standards shall be met for all roads planned in the subdivision.

AWCU XII - Road and Storm Drainage Design and Construction Standards – Major Subdivisions

F. Design Standards

Type of Road or Access	Residential (collector or minor)	Private road	Commercial Industrial	Driveway
Minimum Right of Way width	50'	50'	60'	
Minimum traveled surface width	20'	18'	30'	
Minimum centerline radius	150'		400'	
Minimum tangent between corners of reverse alignment	50'		200'	
Roadway crown	¼"/ft.		¼"/ft.	
Minimum angle of street intersections	80°	75°	90°	45°
Maximum grade	8%	10%	5%	
Maximum grade within 75' of intersection (measured from shoulder of road)	2%	2%	2%	10%
Maximum grade within 25' of intersection (Measured from shoulder of road)	2%	2%	2%	2%
Minimum shoulder radii at intersections	15'		30'	
Minimum ROW radii at intersections	10'	10'	20'	
Minimum width of shoulders (each side)	3'	3'	9'	
Minimum bottom of ditch below roadway elev.18"		18"	18"	

ARTICLE XII - Road and Storm Drainage Design and Construction  
Standards - Major Subdivision

F. The centerline of the roadway shall normally be the centerline of the right of way.

G. Dead End Roads. In addition to the design standards stated above, dead-end roads shall be constructed to provide a cul-de-sac turn around with the following requirements for radii: Property line 65 ft.; outer edge of pavement 50 ft.; inner edge of pavement 30 ft. The board may also require the reservation of a fifty foot easement in line with the road to provide for future continuation of the road. The maximum length of a dead-end road shall not exceed 900 feet.

12.3 Road Construction Standards.

A. Preparation.

1. Before any clearing has started on the right of way, the center line and side lines of the new road shall be staked or flagged at fifty foot intervals.
  2. Before grading is started, the entire right of way shall be cleared of all stumps, roots, brush, large rocks, ledge outcrops and other objectionable material.
  3. All organic materials shall be removed to a depth of two feet below the subgrade of the roadway. Rocks and boulders shall also be removed to a depth of two feet below the subgrade of the roadway. On soils which have been identified as not suitable for roadways, the subsoil shall be removed from the road site to a depth of two feet below the subgrade and replaced with material meeting the specifications for gravel aggregate sub-base below.
  4. Except in ledge cut, side slopes shall be no steeper than a slope of three feet horizontal to one foot vertical, and shall be graded, loamed, limed, fertilized and seeded according to the specifications of the erosion and sedimentation control plan. Where a cut results in exposed ledge a side slope of no greater than four feet vertical to one foot horizontal is permitted.
- S. All underground utilities shall be installed prior to paving to avoid cuts in the pavement.

ARTICLE XII - Road and Storm Drainage Design and Construction  
Standards - Major-subdivision

B. Bases and Pavement

1. Bases

- a. The Aggregate Sub-base Course shall be sand or gravel of hard durable particles free from vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of the part that passes a 3 inch square mesh sieve shall meet the following grading requirements:

<u>Sieve</u>	<u>% by Weight Passing Square Mesh Sieve</u>
1/4 inch	25-70%
no. 40	0-30%
no. 200	0-7%

Aggregate for the sub-base shall contain no particles of rock exceeding four inches in any dimension.

- b. The Aggregate Base Course shall be sand or gravel of hard durable particles free from vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of the part that passes a 3 inch square mesh sieve shall meet the following grading requirements:

<u>Sieve</u>	<u>% by-Weight Passing Square Mesh Sieve</u>
1/2 inch	45-70%
1/4 inch	30-55%
no. 40	0-20%
no. 200	0-5%

Aggregate for the sub-base shall contain no particles of rock exceeding two inches in any dimension.

- 2. Where pavement joins an existing pavement, the pavement shall be cut along a smooth line and form a neat, even, vertical joint.
- 3. Pavements.
  - a. Minimum standards for the base layer of pavement shall be the M.D.O.T. specifications for plant mix grade B with an aggregate size no more than 1 inch maximum.

ARTICLE XII - Road and Storm Drainage Design and Construction  
Standards - Major Subdivision

- b.** Minimum standards for the surface layer of pavement shall meet the M.D.O.T. specifications for plant mix grade C with an aggregate size no more than 3/4 inch **maximum.**
- 4.** The following minimum construction standards shall **be** met for **all** planned roads in the subdivision.

ARTICLE XII - Road and Storm Drainage Design and Construction Standards – Major Subdivision

5. Construction Standards

Type of Road or Access	Residential (collector or minor)	Private road	Commercial Industrial
Minimum thickness of materials after Compaction of road materials			
Aggregate sub-base course (max stone – 4")	15"	9"	15"
Crushed aggregate base course <sup>1</sup>	3"	3"	4"
Hot bituminous payment - total	2.5" <sup>2</sup>		3"
surface course <sup>3</sup>	1"		1.25"
base course <sup>4</sup>	1.5"		1.75"

<sup>1</sup> sub-base gravel may be used if it does not contain too many 3" to 6" stones and it can be fine graded

<sup>2</sup> If hot bituminous is applied, it shall meet these standards

<sup>3</sup> M.D.O.T. grade C hot mix with liquid asphalt content of 6% - 7%

<sup>4</sup> M.D.O.T. grade B hot mix with liquid asphalt content of 5.2% - 6%

ARTICLE XII - Road and Storm Drainage Design and Construction  
Standards - Major Subdivision

12.4 Storm Water Management Design Standards

- A. Adequate provision shall be made for disposal of all storm water generated within the subdivision, and any drained ground water through a management system of swales, culverts, and underdrains. The storm water management system shall be designed to conduct storm water flows to existing watercourses.
  - 1. Where a subdivision is traversed by a stream, or surface water drainageway, or where the board feels that surface water runoff to be created by the subdivision should be controlled, easements or drainage rights-of-way with swales, culverts, or other means of channelling surface water shall be provided.
  - 2. All components of the storm water management system shall be designed to limit peak discharge to predevelopment levels for every storm between the 2-year and the 25-year, 24-hour duration, frequencies, based on rainfall data for Bangor, Maine. When the subdivision discharges directly to a major water body, peak discharge may be increased from predevelopment levels provided downstream drainage structures are suitably sized.

The minimum pipe size for any storm drainage pipe shall be twelve inches. Maximum trench width at the pipe crown shall be the outside diameter of the pipe plus two feet. Pipe shall be bedded in a fine granular material, containing no stones larger than 3 inches, lumps of clay, or organic matter, reaching a minimum of six inches below the bottom of the pipe extending to six inches above the top of the pipe.
- B. The storm water management system shall be designed to accommodate upstream drainage, taking into account existing conditions and approved or planned developments not yet built and shall include a surplus design capacity factor of 25% for potential increases in upstream runoff.
- C. Downstream drainage requirements shall be studied to determine the effect of the proposed subdivision. The storm drainage shall not overload existing or future

ARTICLE XII - Road and Storm Drainage Design and Construction  
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planned storm drainage systems downstream from the subdivision. The subdivider shall be responsible for financing any improvements to existing drainage systems required to handle the increase storm flows.

- D. Outlets, both surface and subsurface, shall be stabilized against soil erosion by stone riprap or other suitable materials to reduce storm water velocity.
- E. All drainage pipe shall meet the required soil and traffic loads, and all ASTM standards for their intended use.

12.5 Additional Improvements and Requirements.

- A. Erosion Control. The procedures outlined in the erosion and sedimentation control plan shall be implemented during the site preparation, construction, and clean-up stages.
- B. Clean-up. Following road construction, the developer or contractor shall conduct a thorough clean-up of stumps and other debris from the entire road right of way. If onsite disposal of the stumps and debris is proposed, the site shall be indicated on the Plan, and be suitably covered with fill and topsoil, limed, fertilized, and seeded.
- C. Road Names, Signs and Lighting. Roads which join and are in alignment with roads of abutting or neighboring properties shall bear the same name. Names of new roads shall not duplicate, nor bear phonetic resemblance to the names of existing roads within the Municipality, and shall be subject to the approval of the Board. The developer shall reimburse the Municipality for the costs of installing road names, traffic safety and control signs necessary for the subdivision.

12.6 Certification of Construction.

- A. "As Built" plans shall be submitted to the Municipal Officers. Upon completion of road construction and prior to a vote by the Municipal Officers to submit a proposed public way to the legislative body, a written certification signed by a professional engineer



ARTICLE XII - Road and Storm Drainage- Design and Construction  
Standards – Major Subdivision

registered in the State of Maine shall be submitted to the Municipal Officers at the expense of the applicant, certifying that the proposed way meets-or exceeds the design and construction requirements of this ordinance.

ARTICLE XIII-A - Performance Guarantees - Minor Subdivision

13A.1 Conditional Agreement. The board, at its discretion, may require the subdivider to enter into a binding agreement with the Town of Dixmont. Such an agreement shall provide for approval of the Final Plan on the condition that no more than 3 lots may be sold or built upon until either:

- A. 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
- B. 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 prorated for the portions of the required improvements already installed.

13A.2 Release of Guarantee. Prior to the release of any part of the performance guarantee, the Board shall determine to its satisfaction, 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.

13A.3 Default. If, upon inspection, the Board 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 Code Enforcement Officer, the Municipal Officers, and the subdivider or builder. The Municipal Officers shall take any steps necessary to preserve the Town's rights.

ARTICLE XIII-B - Performance Guarantees - Major Subdivision

13B.1 Types of Guarantees. With submittal of the application for Final Plan approval, the subdivider shall provide one of the following performance guarantees for an amount adequate to cover the total construction costs of required improvements (including but not limited to central water supply systems, central sewage disposal systems, and roads), taking into account the time span of the construction schedule and the inflation rate for construction costs:

- A. Either a certified check payable to the Town or a savings account or certificate of deposit naming the Town as owner, for the establishment of an escrow account;
- B. A performance bond payable to the Town issued by a surety company, approved by the Municipal Officers;
- C. An irrevocable letter of credit from a financial institution establishing funding for the construction of required improvements, 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, and/or Town Attorney.

13B.2 Contents of Guarantee. The performance guarantee shall contain a construction schedule, cost estimates for each major phase of construction taking into account inflation, provisions for inspections of each phase of construction, provisions for the release of part or all of the performance guarantee to the developer, and a date after which the developer will be in default and the Town shall have access to the funds to finish construction.

13B.3 Escrow Account. A cash contribution to the establishment of an escrow account shall be made by either a certified check made out to the municipality, the direct deposit into a savings account, or the purchase of a certificate of deposit. For any account opened by the subdivider, the municipality shall be named as owner or co-owner, and the consent of the municipality shall be required for a withdrawal. Any interest earned on the escrow account shall be returned to the subdivider unless the municipality has found it necessary to draw on the account, in which case the interest earned shall be proportionately divided between the amount returned to the subdivider and the amount withdrawn to complete the required improvements.

13B.4 Performance Bond. A performance bond shall detail the

ARTICLE XIII-B - Performance Guarantees - Major Subdivision

conditions of the bond, the method for release of the bond or portions of the bond to the subdivider, and the procedures for collection by the municipality. The bond documents shall specifically reference the subdivision for which approval is sought.

13B.5 Letter of Credit. An irrevocable letter of credit from a bank or other lending institution shall indicate that funds have been set aside for the construction of the required improvements in the subdivision and may not be used for any other project or loan.

13B.6 Phasing of Development. The Board may approve plans to develop a major subdivision in separate and distinct phases. This may be accomplished by limiting final approval to those lots abutting that section of the proposed subdivision road which is covered by a performance guarantee. When development is phased, road construction shall commence from an existing public way. Final approval of lots in subsequent phases shall be given only upon satisfactory completion of all requirements pertaining to previous phases.

13B.7 Release of Guarantee. Prior to the release of any part of the performance guarantee, the Board shall determine to its satisfaction, 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.

13B.8 Default. If, upon inspection, the Board, or other designated inspector 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 Code Enforcement Officer, the Municipal Officers, and the subdivider or builder. The Municipal Officers shall take any steps necessary to preserve the Town's rights.

ARTICLE-XIII-B - Performance Guarantees - Major Subdivision

conditions of the bond, the method for release of the bond or portions of the bond to the subdivider, and the procedures for collection by the municipality. The bond documents shall specifically reference the subdivision for which approval is sought.

13B.5 Letter of Credit. An irrevocable letter of credit from a bank or other lending institution shall indicate that funds have been set aside for the construction of the required improvements in the subdivision and may not be used for any other project or loan.

13B.6 Phasing of Development. The Board may approve plans to develop a major subdivision in separate and distinct phases. This may be accomplished by limiting final approval to those lots abutting that section of the proposed subdivision road which is covered by a performance guarantee. When development is phased, road construction shall commence from an existing public way. Final approval of lots in subsequent phases shall be given only upon satisfactory completion of all requirements pertaining to previous phases.

13B.7 Release of Guarantee. Prior to the release of any part of the performance guarantee, the Board shall determine to its satisfaction, 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.

13B.8 Default. If, upon inspection, the Board, or other designated inspector 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 Code Enforcement Officer, the Municipal Officers, and the subdivider or builder. The Municipal officers shall take any steps necessary to preserve the Town's rights.

ARTICLE XIV - WAIVERS

- 14.1 Where the Board makes written findings of fact that there are special circumstances of a particular tract, parcel or structure proposed to be subdivided, it may waive portions of the submission requirements or the standards, unless otherwise indicated in the ordinance, to permit a more practical and economical development, provided the public health, safety, and welfare are protected, and provided the waivers do not have the effect of nullifying the intent and purpose of the Official Map, the Comprehensive Plan, the Zoning Ordinance, or this ordinance, and provided the criteria of the State Subdivision Law are met. When the Board grants a waiver to any of the standards of this ordinance, the Final Plan shall indicate the waivers granted and the date on which they were granted.

ARTICLE XV - APPEALS

- 15.1 An aggrieved party may appeal any decision of the Board under this ordinance to the Dixmont Board of Appeals within thirty days. The aggrieved party may appeal the Board of Appeals decision to the Penobscot County Superior Court within thirty days of the Board of Appeals decision.

Subdivision Ordinance  
Dixmont, Maine

Effective July 18, 1989  
Amended March 21, 1998

**Town of Dixmont  
Wind Energy Facility Ordinance**

**Section I - Purpose and Intent**

This Ordinance is adopted pursuant to 30-A M.R.S.A. § 3001, to protect the health, safety, and welfare of the Town of Dixmont and its residents. This Ordinance shall be known as the “Dixmont Wind Energy Facility Ordinance.”

**Section II - Applicability; Site Permit and Operational License Required**

- (a) This Ordinance applies to all Wind Energy Facilities proposed to be constructed or operated after the effective date of the Ordinance, except that this Ordinance does not apply to stand-alone Wind Turbines constructed primarily for on-site residential or farm use.
- (b) Wind Energy Facilities constructed prior to the effective date of this Ordinance shall not be required to meet the Site Permit requirements of this Ordinance, except that any modification to an existing Wind Energy Facility that materially alters the size, type or number of Wind Turbines or other equipment shall require a Site Permit under this Ordinance.
- (c) Wind Energy Facilities constructed prior to the effective date of this Ordinance shall be required to obtain Operational Licenses pursuant to this Ordinance within thirty (30) days of its effective date,
- (d) It shall be unlawful and a violation of this Ordinance to begin construction and/or operation of a Wind Energy Facility without a Site Permit and Operational License.
- (e) The burden of compliance with all aspects of this Ordinance is on the Applicant and the Owner/operator of a Wind Energy Facility. Approval of a Site Permit and Operational License by the Planning Board does not abrogate or reduce the responsibility of the Applicant or the Owner/operator to comply with this Ordinance. Consistent violations, particularly of the sound limits, may lead to decommissioning and removal of the Wind Energy Facility.
- (f) This Ordinance includes Sections (I) through (XIII), together with the Appendix and References Section. Decisions regarding compliance or approval of an Applicant’s Site Permit and Operational License must be made in light of the entire Ordinance.

**Section III - Definitions**

The following terms are defined as follows.

- (a) Ambient Sound includes all sound present in a given environment. It includes intermittent sounds, such as aircraft, barking dogs, wind gusts, mobile farm or construction machinery, and vehicles traveling along a nearby road. It also includes insect and other nearby sounds from birds, animals or people.
- (b) Applicant means the individual or business entity that seeks to secure a Permit or License under this Ordinance.



- (c) A-Weighted Sound Level (dBA) is one measure of the overall sound level. This measure is designed to reflect the response of the human ear, which does not respond equally to all frequencies. Lower frequency sounds are given less weight than those in the mid-range of human perception. The resulting measure is said to be A-weighted and the units are dBA.
- (d) Background Sound ( $L_{90}$ ) is defined over a continuous ten minute period to be the average sound level during the quietest one continuous minute of the ten minutes.  $L_{90}$  may be measured relative to A-weighting or C-weighting, in which case it may be denoted  $L_{90A}$  or  $L_{90C}$ . It refers to sound that is normally present at least 90% of the time, and excludes any sound generated by a WEF. It also excludes intermittent sounds from flora, fauna, wind and human activity. Background sound levels vary during different times of the day and night. Because wind turbines operate continuously, the background sound levels of interest are those during quieter periods which are often the evening and night.
- (e) C-Weighted Sound Level (dBC) is similar to the A-weighted sound level (dBA), but it does not de-emphasize low frequencies to the extent that A-weighting does. For sounds with a significant low-frequency component, dBC is a more accurate measure of the energy of the sound waves than dBA.
- (f) Decibel (dB) refers to a dimensionless quantity which is proportional to the logarithm (base 10) of a ratio of two quantities that are proportional to the power, energy or intensity of sound. One of these quantities is a reference level relative to which all other levels are measured.
- (g) Essential Wildlife Habitat means areas identified by the Commissioner, Maine Department of Inland Fisheries and Wildlife, in accordance with the provisions of 12 M.R.S.A., Chapter 925, Subchapter 3, and any Department of Inland Fisheries and Wildlife rules implementing that Subchapter.
- (h) Frequency is the number of complete oscillations or cycles per unit of time. See Hertz, below.
- (i) Good Utility Practice means any of the practices, methods and acts with respect to the safe operation of a WEF engaged in or approved by a significant portion of the electric utility industry and, in particular, those portions of the industry with experience in the construction, operation and maintenance of wind turbines during the relevant time period; or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision is made, could be expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the region.
- (j) Height means the total distance measured from the grade of the property as it existed prior to the construction of the wind energy system, facility, tower, turbine, or related facility at the base to its highest point. In the case of a wind turbine, this includes the length of the blade at its highest possible point.
- (k) Hertz (Hz) is a unit of cycles per second. A process that repeats itself a given number of times in one second is said to occur at that many Hertz.
- (l) Measurement Point (MP) refers to a location where sound and/or vibration are measured.

- (m) Mitigation Waiver means a legally enforceable, written agreement between the Applicant and a Non-participating Landowner in which the landowner waives certain setback, noise or other protections afforded in the Ordinance. A Parcel in which the landowner has entered into such an agreement becomes a Participating Parcel. A complete copy of any such agreement must be provided to the Planning Board and recorded in the Penobscot County Registry of Deeds.
- (n) Noise means any sound produced by a WEF. Noise does not need to be loud to constitute an interference with the health and well-being of residents.
- (o) Non-Participating Parcel means a parcel of real estate that is neither a Project Parcel nor a Participating Parcel.
- (p) Occupied Structure means a building in which people live, work or frequent.
- (q) Owner/operator means the person or entity with legal ownership of a WEF or WES, including successors and assigns, that has the authority and responsibility to operate the WEF on a day-to-day basis. An Owner/operator must have the legal authority to represent and bind.
- (r) Participating Parcel means a parcel of real estate that is not a Project Parcel, but is subject to a Mitigation Waiver. A complete copy of the Mitigation Waiver must be provided to the Planning Board, and filed with the Penobscot County Registry of Deeds.
- (s) Project Boundary means the boundaries of the WEF as shown on the site plan submitted to and approved by the Planning Board in accordance with this Ordinance.
- (t) Project Parcel means any parcel(s) of real estate on which all or any part of a WEF will be constructed.
- (u) Property Line means the recognized and mapped property boundary line.
- (v) Public Way means any road capable of carrying motor vehicles, including, but not limited to, any state highway, municipal road, county road, unincorporated territory road or other road dedicated to the public.
- (w) Qualified Independent Acoustical Consultant. Qualifications for persons conducting baseline and other measurements and reviews related to the Application for a WEF or for enforcement actions against an operating WEF include, at a minimum, demonstration of competence in the specialty of community noise testing and Board Certified Membership in the Institute of Noise Control Engineers (INCE). Certifications such as Professional Engineer (P.E.) do not test for competence in acoustical principles and measurement and are thus not, without further qualification, appropriate for work under this Ordinance. The Independent Qualified Acoustical Consultant can have no direct or indirect financial or other relationship to an Applicant.
- (x) Scenic or Special Resource means a scenic resource of state or national significance, as defined in Title 35-A M.R.S.A. § 3451(9), any site registered in the National Registry of Historic Places, or a scenic or special resource of local significance identified as such in the Dixmont Comprehensive Plan, or listed on the Visual Resource Inventory of the Dixmont Comprehensive Plan.

- (y) Sensitive Receptor means places or structures intended for human habitation, whether inhabited or not, public parks, state and federal wildlife areas, the manicured areas of recreational establishments designed for public use, including but not limited to golf courses, camp grounds and other nonagricultural businesses. These areas are more likely to be sensitive to the exposure of the noise, vibration, shadow or flicker generated by a WEF. These areas include, but are not limited to: schools, daycare centers, elder care facilities, hospitals, places of seated assemblage, nonagricultural businesses and residences.
- (z) Sound. A fluctuation of air pressure which is propagated as a wave through air.
- (aa) Sound Level ( $L_{10}$ ) refers to the sound level exceeded 10% of the time. During any continuous ten minute period,  $L_{10}$  is defined to be the average sound level during the loudest one continuous minute of the ten minutes.  $L_{10}$  may be measured relative to A-weighting or C-weighting, in which case it may be denoted  $L_{10A}$  or  $L_{10C}$ .
- (bb) Sound Level ( $L_{90}$ ) refers to Background Sound (see above).
- (cc) Sound Level ( $L_{eq}$ ) is the frequency-weighted equivalent sound level. It is defined to be the steady sound level that contains the same amount of acoustical energy as the corresponding time-varying sound.  $L_{eq}$  may be measured relative to A-weighting or C-weighting, in which case it may be denoted  $L_{eqA}$  or  $L_{eqC}$ .
- (dd) Sound Level (pre/post). Each of the Sound Levels defined above,  $L_{90}$ ,  $L_{10}$  and  $L_{eq}$ , whether A-weighted or C-weighted, may be followed by “(pre)” or “(post)”. Post-construction Sound Levels measured with all elements of the WEF turned on will be denoted with “(post)”. During the application process, before the WEF has been constructed, “(post)” will be used to denote the pre-construction estimate of the post-construction Sound Level. Pre-construction Sound Levels, or Sound Levels measured with all elements of the WEF turned off will be denoted with “(pre)”. See the Appendix, particularly Parts c(3)A, c5 and d.
- (ee) Wind Energy System (WES) means equipment that converts and then transfers energy from the wind into usable forms of energy on a large, industrial scale for commercial or utility purposes with sale off premises or onto the utility grid.
- (ff) Wind Energy Facility (WEF) means all of the land and equipment used by the Wind Energy System and its support facilities including the wind turbine, tower, access roads, control facilities, meteorological towers, maintenance and all power collection and transmission systems.
- (gg) Wind Energy Facility Operational License or WEF Operational License means a license to operate a Wind Energy System issued by the Planning Board in accordance with this Ordinance
- (hh) Wind Energy Facility Site Permit or WEF Site Permit means a Permit to construct a Wind Energy System issued by the Planning Board in accordance with this Ordinance.
- (ii) Wind Turbine or Turbine (WT) means a mechanical device which captures the energy of the wind and converts it into electricity. The primary components of a wind turbine are the blade assembly, electrical generator and tower.

#### **Section IV - Site Permit Application Procedures**

- (a) Applications for a WEF Site Permit shall be submitted to the Planning Board. The application for a WEF Site Permit shall include all of the information, documents, plans, deposits and other items required to be submitted with an application under Section (V), a preliminary cost agreement and the fees specified in Section (VII), along with any costs outlined in the Appendix. At least eight copies of all written materials, including maps or drawings, shall be provided. Written materials shall be contained in a bound report.
- (b) The Planning Board shall, with assistance from such staff, consultants, committees or commissions as it deems appropriate, determine whether the Application is complete and contains all of the materials, information, agreements, deposits and payments required to be submitted with an Application under Sections (V), (VI), (VII), and the Appendix. If an Application is not complete, then the Applicant shall be so advised, and no further action shall be taken by the Planning Board until a complete Application is received.
- (c) After the Planning Board determines that an Application is complete, the Planning Board shall determine whether the Application meets all requirements of this Ordinance. In determining whether the Application meets the requirements of this Ordinance, the Planning Board may obtain assistance from such staff and consultants as it deems appropriate. The Planning Board shall process the Application as soon as reasonable and feasible, given the complexity of the Application, other business facing the Town, staff and other resources, questions that arise during the review process, and other matters affecting the time needed to complete the review process.
- (d) If an Application is complete and meets all requirements of this Ordinance, and the Applicant has paid all fees and costs pursuant to Sections (V) and (VII) and the Appendix, then the Planning Board shall approve a WEF Site Permit for the WEF. If an Application does not meet all requirements of this Ordinance or the Applicant has not paid all fees and costs, then the Planning Board may deny the Application or approve the Application with conditions that will assure compliance with this Ordinance. If an Application is approved with conditions, then a WEF Site Permit for the WEF shall be issued when all conditions of approval have been satisfied.
- (e) Any significant modification of the approved WEF, such as but not limited to, the number of WTs, tower height, tower locations, turbine design and specifications shall require the Applicant to obtain an amended Site Permit from the Planning Board, pursuant to this Ordinance. The application procedures and permit requirements and standards for amending a Site Permit are the same as for an initial application.
- (f) An Application for a WEF Site Permit shall include the following information and meet the following requirements. Items that are considered to be part of the Site Plan are followed by “(SP)” in the list below.
  - (1) The Applicant’s name, address and phone number, and the name, address and phone number of the Owner/operator, if different.
  - (2) A narrative describing the proposed WEF, including an overview of the project, the project location, and the generating capacity and expected production of the WEF.
  - (3) Evidence of the Applicant’s technical and financial ability to implement the project as proposed.

- (4) An overview map that includes the extent of the entire Town, showing all roads, together with the location of all WTs, access roads, power transmission lines, and any other features of the WEF deemed to be relevant by the Planning Board. (SP)
- (5) The tax map and lot number of all Project Parcels. (SP)
- (6) For any Project Parcel that is not owned by the Applicant, a copy of any agreement(s) between the owner of the Project Parcel and the Applicant and/or the Owner/operator.
- (7) The boundaries of all Project Parcels, surveyed by a Maine Professional Land Surveyor, with name, registration number and seal of the surveyor provided. (SP)
- (8) The boundaries of all Participating Parcels. (SP)
- (9) The boundaries of all Non-Participating Parcels located within 5,280 feet of any proposed WT, together with the distance to, and bearing to, all boundary lines relative to each proposed WT, as measured from the nearest point of the property line to the WT. This information shall be provided by a Maine Professional Land Surveyor. (SP)
- (10) The names, addresses and phone numbers of the owners of all Project Parcels, Participating Parcels, and Non-Participating Parcels located within 5,280 feet of any proposed WT, with each property owner's status indicated (Project Parcel, Participating Parcel or Non-Participating Parcel), including the book and page reference of the identified owner's interest as recorded in the Penobscot County Registry of Deeds.
- (11) An aerial photo showing all Project Parcels, Participating Parcels, and Non-Participating Parcels located within 5,280 feet of any proposed WT.
- (12) Existing zoning of each Project Parcel and all required zoning setbacks on each Project Parcel. (SP)
- (13) The location of all components of the WEF, including but not limited to the WTs, access roads, control facilities, meteorological towers, turnout locations, substation(s), ancillary equipment, buildings, structures, and temporary staging areas, together with maintenance and all power collection and transmission systems. (SP)
- (14) The location and description of all structures located on Project Parcels, and all occupied structures located on Participating and Non-Participating Parcels located within 5,280 feet of any proposed WT. (SP)
- (15) Dimensional representation and sizes of the structural components of the tower construction including the base, footings, tower, and blades. (SP)
- (16) The distance between each WT tower and each of the following shall be shown on the site plan: those structures listed in (14), above, above-ground utility lines, telephone lines, towers, and public ways located within 5,280 feet of any proposed WT. (SP)
- (17) Schematic of electrical systems associated with the proposed WEF including all existing and proposed electrical connections.
- (18) Manufacturer's specifications and installation and operation instructions.

- (19) The direction of proposed surface water drainage across and from Project Parcels and Participating Parcels, with an assessment of impacts on downstream properties and water resources, including, but not limited to, streams and wetlands. (SP)
- (20) The location of any of the following found within 5,280 feet of any proposed WT: open drainage courses, wetlands, and other important natural areas and site features, including, but not limited to, floodplains, deer wintering areas, Essential Wildlife Habitats, Significant Wildlife Habitats, Scenic or Special Resources, habitat of rare and endangered plants and animals, unique natural areas, sand and gravel aquifers and historic and/or archaeological resources, together with a description of such features. (SP)
- (21) Provisions made for handling all solid wastes, including hazardous and special wastes and the location and proposed screening of any on-site collection or storage facilities. (SP)
- (22) The location, dimensions and materials to be used in the construction of proposed roads, driveways, parking areas and loading areas, together with an assessment of any changes to traffic flow. (SP)
- (23) A topographical overlay for the Project Parcel(s), Participating Parcels and Non-Participating Parcels located within 5,280 feet of any proposed WT.
- (24) The size and scale of maps and diagrams shall be as determined by the Planning Board, and shall include a north arrow, the date, the scale, and date and seal of a Maine Professional Land Surveyor or professional engineer. (SP)
- (25) The site plan shall include such additional relevant information as the Planning Board may require. (SP)

## **Section V - Site Permit Requirements and Standards**

### **(a) Sound Modeling, Sound Standards and Sound-Related Enforcement Procedures**

- (1) *Independent Pre-licensing Sound Study.* An Application for a WEF Site Permit shall include a four season sound study as specified in the Appendix. This study shall be conducted by a Qualified Independent Acoustical Consultant, selected by the Planning Board. The consultant will review this study and assist the Planning Board in determining whether the proposed WEF will comply with the sound limits set forth in this Ordinance. The Applicant shall provide financial surety that the cost of the study, and its review, will be borne by the Applicant, in accordance with Section (VII) of this Ordinance.
- (2) *Sound Limits(0 to 5280 feet).* No Site Permit shall be issued if the pre-licensing information or sound study indicates that the proposed WEF will not comply with the following requirements, which are to apply everywhere within one mile (5280 feet) of any WT, except on Project Parcel(s) or on a Participating Parcel(s) which is subject to a Mitigation Waiver which specifies different sound limits than those below. If pre-construction estimates of the post-construction sound levels, exceed the limits below, then the WEF Application will be denied; if these limits are exceeded after the WEF has been built, then the WEF will be in violation of this Ordinance.

The sound limits below are stated in terms of  $L_{90}A(\text{pre})$ ,  $L_{\text{eq}}A(\text{post})$ ,  $L_{\text{eq}}C(\text{post})$ ,  $L_{90}C(\text{post})$  and  $L_{\text{eq}}A(\text{post})$ . Each of these quantities is defined in the Appendix, particularly in Parts c(3)A, c5 and d. Prior to construction of the WEF, the “pre” values are as measured and the “post” values are as calculated, following the guidelines of the Appendix. After the WEF has been constructed, the “pre” values are the WEF-Off values and the “post” values are the WEF-On values.

A. *Audible Sound Limit*

- i. No WT, WES or WEF shall be located so as to generate post-construction sound levels that exceed 40 dBA at night (7:00 p.m. to 7:00 a.m.) or 50 dBA during the day (7:00 a.m. to 7:00 p.m.). The appropriate value to use for the post-construction sound level is  $L_{\text{eq}}A(\text{post})$ .
- ii. A 5 dB penalty is applied for tones as defined in IEC 61400-11.

B. *Low Frequency Sound Limit*

- i.  $L_{\text{eq}}C(\text{post})$  minus  $L_{90}A(\text{pre})$  must be less than 20 dB outside of any occupied structure.
- ii.  $L_{90}C(\text{post})$  may not exceed 50 dBC, without contribution from other ambient sounds, for properties located one mile or more away from state highways or other major roads, and it may not exceed 55 dBC for properties closer than one mile from a state highway or other major road.

C. *Mitigation Waiver*

Property owners may waive these sound restrictions with a written Mitigation Waiver agreement. A complete copy of any such agreement must be filed with the Planning Board and Recorded in the Penobscot County Registry of Deeds.

- (3) *Sound Limits (5280 feet to 7920 feet)*. No Site Permit shall be issued if the pre-licensing information or sound study indicates that the proposed WEF will not comply with the following requirements, which are to apply everywhere within a distance ranging from one mile (5280 feet) to one and one-half miles (7920 feet) of any WT, except on Project Parcel(s) or on a Participating Parcel(s) which is subject to a Mitigation Waiver which specifies different sound limits than those below. If pre-construction estimates of the post-construction sound levels, exceed the limits below, then the WEF Application will be denied; if these limits are exceeded after the WEF has been built, then the WEF will be in violation of this Ordinance.

The sound limits below are stated in terms of  $L_{90}A(\text{pre})$ ,  $L_{\text{eq}}A(\text{post})$ ,  $L_{\text{eq}}C(\text{post})$ ,  $L_{90}C(\text{post})$  and  $L_{\text{eq}}A(\text{post})$ . Each of these quantities is defined in the Appendix, particularly in Parts c(3)A, c5 and d. Prior to construction of the WEF, the “pre” values are as measured and the “post” values are as calculated, following the guidelines of the Appendix. After the WEF has been constructed, the “pre” values are the WEF-Off values and the “post” values are the WEF-On values.

A. *Audible Sound Limit.* No WT, WES or WEF shall be located so as to generate post-construction sound levels that exceed pre-construction sound levels by more than 10 dBA. The appropriate value to use for the pre-construction sound level is  $L_{90}A(\text{pre})$ ; the appropriate value to use for the post-construction sound level is  $L_{\text{eq}}A(\text{post})$ .

B. *Low Frequency Sound Limit*

- i.  $L_{\text{eq}}C(\text{post})$  minus  $L_{90}A(\text{pre})$  must be less than 20 dB outside of any occupied structure.
- ii.  $L_{90}C(\text{post})$  may not exceed 50 dBC, without contribution from other ambient sounds, for properties located one mile or more away from state highways or other major roads, and it may not exceed 55 dBC for properties closer than one mile from a state highway or other major road.

C. *General Standard*

$L_{\text{eq}}A(\text{post})$  may never exceed 35 dBA within 100 feet of any occupied structure.

D. *Mitigation Waiver*

Property owners may waive these sound restrictions with a written Mitigation Waiver agreement. A complete copy of any such agreement must be filed with the Planning Board and Recorded in the Penobscot County Registry of Deeds.

(4) *Post-construction Sound Measurements.* Starting within twelve months after the date when the WEF is operating, a post-construction sound study shall be performed, with all WTs operating, as described in Part d of the Appendix. Post-construction sound studies shall be conducted by a Qualified Independent Acoustical Consultant chosen by the Planning Board. The Permittee will provide financial surety that the costs of these studies shall be paid by the Permittee. The surety required by Section (VII) shall include these costs. A Consultant of the Permittee may observe the Town's consultant. The WEF Permittee shall provide all technical information required by the Planning Board or Independent Qualified Acoustical Consultant before, during, and/or after any acoustical studies required by this document and for local area acoustical measurements. The post-construction sound measurements, as described in Part d of the Appendix, shall be repeated at least every five years throughout the life of the facility.

(b) Set-Back Requirements

(1) A WEF shall comply with the following set-back requirements, which shall apply in addition to the siting requirements found elsewhere in this Ordinance. If more than one set-back requirement applies, the greater set-back distance shall be met.

A. All parts of a WEF shall comply with all applicable set-back requirements in the Town's zoning Ordinance.



- B. Each WT shall be set back at least 2,500 feet from the property line of any Non-Participating Parcel. Property owners may waive this setback with a written Mitigation Waiver agreement.
  - C. Each WT shall be set back at least 1,500 feet from any public way.
  - D. Each WT shall be set back at least 1,200 feet from any above-ground electric power line or telephone line except that a lesser setback shall be permitted if the utility agrees, in writing, and this agreement is approved by the Planning Board.
  - E. Each WT shall be set back not less than 5,280 feet from any residence, business, school, daycare facility, church, hospital, or other Occupied Structure on any Non-Participating Parcel. Property owners may waive this setback with a written Mitigation Waiver agreement.
  - F. Each WT shall be set back not less than 1,500 feet from any residence, business, school, daycare facility, church, hospital, or other Occupied Structure, including those located on any Participating Parcel or Project Parcel.
  - G. All WTs must be set back a minimum of 2,500 feet from any Scenic or Special Resource as defined in Section (III).
  - H. All set-back distance measurements shall be based on horizontal distances.
- (2) Minor changes in approved plans necessary to address field conditions may be approved by the Planning Board, provided that any such change does not affect compliance with the Ordinance. The Permittee shall submit revised plans to the Planning Board showing the proposed minor change, which, if approved, shall be considered an amendment to an existing Site Permit and/or Operational License, as appropriate. In the event that a majority of the Planning Board believes that a requested change constitutes a material change to a Site Permit and/or Operational License, or if the changes will affect compliance with the Ordinance, full reapproval is required.
  - (3) All construction activities must conform to the approved site plan, including any conditions of approval and minor changes approved by the Planning Board to address field conditions.
  - (4) Upon completion of the project, the Permittee must provide the Planning Board with a set of construction plans showing the structures and site improvements as actually constructed. These “as-built” plans must be submitted within thirty days of completion of the WEF, and before commencement of operation of the WEF.
- (c) Plan and Risk Assessment for Road and Property Use
- (1) An Application for a WEF Site Permit shall include a road and property use and risk assessment plan containing the following information and meeting the following requirements.
    - A. A description and map of all public ways, and other property, in the Town to be used or affected in connection with the construction of the WEF, including a description of how and when such ways and property will be used or affected.

- B. A description of the type and length of vehicles and type, weight and length of loads to be conveyed on all public ways in the Town.
  - C. A complete assessment of the proposed use of public ways in the Town in connection with the construction of the WEF, including the adequacy of turning radii; the ability of the public ways to sustain loads without damage; the need to remove or modify (permanently or temporarily) signs, trees, utilities, or anything else; any reasonably foreseeable damage to public ways or other property, public or private; any reasonably foreseeable costs that the Town may incur in connection with the use of property in the Town, including but not limited to costs relating to traffic control, public safety, or damage to public ways, or to other public or private property.
  - D. A traffic control and safety plan relating to the use of public ways in the Town in connection with the construction of the WEF.
  - E. Any additional relevant information that the Planning Board may request relating to the use of public ways or other effects on public and private property that may occur in connection with the construction and operation of the WEF.
- (2) The Planning Board will evaluate the risk assessment plan with assistance from such consultants that it deems appropriate, including without limitation a third-party engineer chosen by the Planning Board, the cost to be solely borne by the Applicant. The Planning Board may document the condition of public ways and other property to be used in connection with the construction of the WEF in such manner as it deems appropriate. The Planning Board may require changes to the risk assessment plan that it deems to be appropriate to protect public safety, to protect public and private property, and to address anticipated costs to the Town associated with construction of the WEF.
  - (3) If the Applicant requires the temporary closure of any public way, the Planning Board may require the Applicant to enter into an agreement relating to the use of the public way.
  - (4) The Applicant shall be responsible for paying for any damage to any public way. If the risk assessment anticipates damage to any public way, the Planning Board may require the Applicant to provide a surety in an amount that the Planning Board determines appropriate to secure any obligations under the agreement, including but not limited to any obligation relating to alterations or modifications to public ways made in connection with the Applicant's activities.
- (d) Design Plan and Design Requirements.

An Application for a WEF Site Permit shall include a design plan containing the information and meeting the following requirements.

- (1) The total height of any WT shall not exceed 400 feet above grade, as measured to the blade tips at their maximum distance above grade.
- (2) Wind Turbines shall be painted a non-reflective, non-obtrusive color.

- (3) The design of the buildings shall, to the extent reasonably feasible, use materials, colors, textures, screening and landscaping that will blend with and be compatible with the natural setting and the existing environment.
- (4) Wind Turbines shall not be artificially lighted, except to the extent required by law, and strobe or other intermittent lights are prohibited unless required by law.
- (5) No advertising or display shall be permitted, other than reasonable identification of the manufacturer or operator of the Wind Turbines or WEF.
- (6) Electrical controls and control wiring and power-lines must be wireless or below ground, except where WES collector wiring is brought together for connection to the utility grid.
- (7) The clearance between the ground and the Wind Turbine blades shall be not less than 25 feet.

(e) Additional Protection Requirements.

The Application shall include a statement from the Federal Aviation Administration that the proposed WEF will not pose a hazard to aircraft. The Applicant must also provide memoranda from the Maine Department of Inland Fisheries and Wildlife (MDIFW) Environmental Coordinator and from the Maine Natural Areas Program (MNAP) outlining any concerns that these bodies may have with the proposed WEF. In the absence of any such concerns, the Applicant must provide copies of correspondence with these bodies showing that no such concerns exist. The Applicant must demonstrate that the proposed WEF will not have an undue adverse effect on rare, threatened, or endangered wildlife, Significant Wildlife Habitat, Essential Wildlife Habitat, rare, threatened or endangered plants and rare and exemplary natural plant communities and ecosystems.

(f) Blasting Plan and Requirements.

The Application shall include a blasting plan containing the information and meeting the requirements in this section. The Applicant must execute this plan, and bears sole responsibility for the associated costs. Blasting shall be performed only after approval has been given to the Applicant for such operations and must comply with the following provisions set forth by the State of Maine Statute Title 38, Chapter 3, Subchapter 1, Article 8-A, § 490-Z(14).

- (1) The contractor or any subcontractor shall use sufficient stemming, matting or natural protective cover to prevent fly rock from leaving property owned or under control of the Applicant or from entering protected natural resources or natural buffer strips. Crushed rock or other suitable material must be used for stemming when available; native gravel, drill cuttings or other material may be used for stemming only if no other suitable material is available.
- (2) The maximum allowable airblast at any inhabited building not owned or controlled by the Applicant may not exceed 129 decibels peak when measured by an instrument having a flat response ( $\pm 3$  decibels) over the range of 5 to 200 hertz.
- (3) The maximum allowable airblast at an uninhabited building not owned or controlled by the Applicant may not exceed 140 decibels peak when measured by an instrument having a flat response  $\pm 3$  decibels) over the range of 5 to 200 hertz.

- (4) Monitoring of airblast levels is required in all cases for which a pre-blast survey is required by paragraph (6). The contractor may file a permit modification requesting a waiver of the monitoring requirement if the contractor or subcontractor secures the permission of affected property owners to increase allowable airblast levels on their property and the Planning Board determines that no protected natural resources will be adversely affected by the increased airblast levels. The cost to prepare the permit modification and the affect of project delay while the Planning Board reviews the request shall be borne solely by the contractor or his subcontractor.
- (5) If a blast is to be initiated by detonating cord, the detonating cord must be covered by crushed rock or other suitable cover to reduce noise and concussion effects.
- (6) A preblast survey is required and must extend a minimum radius of 2,640 feet from the blast site. The information gathered by the survey must be satisfactory to the Planning Board. Pre-blast surveys should include both the interior and exterior of each structure. The pre-blast survey must document any pre-existing damage to structures and buildings and any other physical features within the survey radius that could reasonably be affected by blasting. Assessment of features such as pipes, cables, transmission lines and wells and other water supply systems may be limited to surface conditions and other readily available data, such as well yield and water quality. The pre-blast survey must be conducted prior to the initiation of blasting. The contractor or subcontractor shall retain a copy of all pre-blast surveys for at least one year from the date of the last blast on the development site.

Notification that blasting will occur must be provided to all owners of structures to be surveyed at least 10, but not more than 30, days prior to commencement of blasting. The results of the preblast survey must be provided to the property owner no later than the date on which this notification is given.

The contractor or the subcontractor is not required to conduct a pre-blast survey on properties for which the Applicant or operator documents the rejection of an offer by registered letter, return receipt requested, to conduct a pre-blast survey. Any person owning a building within a pre-blast survey radius may voluntarily waive the right to a survey.

- (7) Blasting timeframes shall be coordinated with the local emergency responders, or as otherwise restricted by the local Fire Department. Blasting shall not occur between the hours of 7:00 p.m. and 7:00 a.m. No blasting shall be done on weekends or holidays.
- (8) Sound from blasting may not exceed the following limits at any protected location as defined in the MDEP Regulations, 06-096 C.M.R. Ch. 400, § 1:

Number of Blasts Per Day	Sound Level Limit
1	129 dB
2	126
3	124
4 or more	123

(g) Signal Interference Requirements

The WEF shall not cause any disruption or loss of radio, telephone, television or similar signals. The Applicant shall provide a statement from the Federal Communications Commission that the proposed WEF will not cause any disruption of radio, television or similar signals.

(h) Shadow Flicker and Blade Glint Assessment and Requirements

(1) Shadow flicker occurs when the blades of a Wind Turbine pass between the sun and an observer, casting a readily observable, moving shadow on the observer and his or her immediate environment. The Application shall include a detailed shadow flicker and blade glint assessment model and an estimate of the expected amount of flicker and glint. This study must meet the following requirements.

- A. The study shall be prepared by a registered professional regularly engaged in this type of work who is chosen by the Planning Board. The Applicant shall be responsible for paying the registered professional's fees and all costs associated with conducting the study. The Applicant shall provide financial surety to the Town for the cost of the study in accordance with Section (VII) of this Ordinance. There shall be an absence of any conflict of interest as defined in Section XII of this Ordinance for any professional conducting this study.
- B. The study will examine the areas within a one mile radius of any WT in the proposed WEF.
- C. The model will be calculated using the following minimum inputs:
  - i. Turbine locations (proposed and existing)
  - ii. Shadow flicker Sensitive Receptor locations
  - iii. Existing topography (elevation contours and vegetation)
  - iv. Rotor diameter, blade width and hub height
  - v. Joint wind speed and direction distribution (wind rose table)
  - vi. Hours of sunshine (long term monthly references)
- D. The model may be prepared by use of current aerial photography and topographical maps. A site visit by the preparer is required to identify Sensitive Receptors and to verify the existing conditions.
- E. The study shall estimate the locations and durations of shadow flicker caused by the proposed WEF within the study area. The study shall clearly indicate the duration of shadow flicker at locations throughout the study area, showing the total number of hours per year anticipated.
- F. The study must include estimates for the duration of shadow flicker at all existing occupied structures and roadways. The estimated duration of shadow flicker at such locations shall include flicker that occurs within 100 feet of the structures.

- G. The study must include a statement of the assumptions made, methodology applied, and data used by the study. This information must be sufficient to allow an independent third party to verify the results of the study.
  - H. The study shall include a paint sample that demonstrates the color, texture and gloss of the proposed surface coating and a certification that the proposed surface coating will not create a reflective surface conducive to blade glint.
- (2) The Application will not be approved if the study estimates that the duration and location of flicker will be such that there are more than 10 hours of flicker per year at any occupied structure located on a Non-participating Parcel. If, after construction, the WEF violates this condition, then the WEF will be in violation of this Ordinance.
  - (3) Blade glint, defined as the intermittent reflection of the sun off the surface of the blades of a Wind Turbine, is prohibited.

(i) Sign Plan and Sign Requirements.

An Application for a WEF Site Permit shall include a sign plan meeting the requirements in this section.

- (1) The plan shall provide reasonable signage at the WEF, identifying the Project Parcels as being part of the WEF and providing appropriate safety notices and warnings.
- (2) No advertising material or signage other than warning, equipment information or indicia of ownership shall be allowed on the Wind Turbines. This prohibition shall include the attachment of any flag, decorative sign, streamers, pennants, ribbons, spinners or waving, fluttering or revolving devices, but not including weather devices.
- (3) The address and phone number of the Owner/operator and Licensee shall be posted on all access points from public roads.

(j) Stray Voltage Assessment and Requirements.

- (1) An Application for a WEF Site Permit shall include reports of stray voltage analyses in accordance with this section. The Applicant shall conduct and include a report of a preconstruction stray voltage test on all commercial livestock facilities located within a one-mile radius of the Project Parcels. The tests shall be performed by an investigator, approved by the Planning Board, using a testing protocol which is approved by the Planning Board. A report of the tests shall be provided with the WEF Site Permit Application and shall be provided to the owners of all property included in the study area. Applicant shall seek written permission from property owners prior to conducting testing on such owners' property. Applicant shall not be required to perform testing on property where the owners have refused to grant permission to conduct the testing.
- (2) Following construction of the WEF and within one year after commencing operation, the Applicant shall conduct a postconstruction stray voltage test on all commercial livestock facilities located within a one-mile radius of the Project Parcels. The tests shall be performed by an investigator approved by the Planning Board and shall be performed using a testing protocol which is approved by the Planning Board. A report of the tests

shall be provided to the Planning Board and to the owners of all property included in the study area. Applicant shall seek written permission from property owners prior to conducting testing on private property. Applicant shall not be required to perform testing on property where the owners have refused to grant permission to conduct the testing.

- (3) The Applicant or subsequent holder of the Operational License shall provide neutral isolation devices to property owners where testing reveals neutral-to-earth voltages in excess of 0.5 volts caused by the WEF.

(k) Security Plan and Requirements

The Application shall include a security plan that contains the information and meets the requirements in this section.

- (1) The outside of Wind Turbines shall not be climbable.
- (2) All access doors to the towers and electrical equipment shall be locked.
- (3) Warning signs shall be placed on each tower, all electrical equipment, and each entrance to the WEF.
- (4) All motor vehicle access points to the WEF from public roads shall be gated.

(l) Fire Prevention and Emergency Response Plan and Requirements.

An Application for a WEF Site Permit shall include a fire prevention and emergency response plan containing the information and meeting the requirements in this section. The plan shall describe the potential fire and emergency scenarios that may require a response from fire, emergency medical services, police or other emergency responders. The plan shall designate the specific agencies that would respond to potential fire or other emergencies, shall describe all emergency response training and equipment needed to respond to a fire or other emergency, shall include an assessment of the training and equipment available to the designated agencies, and shall provide for any special training or emergency response equipment that the designated agencies need to use in responding to a potential fire or other emergency. The study shall be conducted at Applicant's cost and the Applicant shall pay for the cost of any training or equipment required by local fire and emergency responders.

Access to the WEF and construction area(s) shall be constructed and maintained following a detailed erosion control plan in a manner designed to control erosion and to provide maneuverability for service and emergency response vehicles.

(m) Emergency Shutdown Plan and Requirements.

An Application for a WEF Site Permit shall include an emergency shutdown plan. The plan shall describe the circumstances under which an emergency shutdown may be required to protect public safety, and shall describe the procedures that the Town and the Owner/operator and Licensee will follow in the event an emergency shutdown is required.

(n) Decommissioning and Site Restoration Plan and Requirements.

An Application for a WEF Site Permit shall include a decommissioning and site restoration plan containing the information and meeting the requirements in this section.

- (1) The plan shall provide for the removal from the Project Parcels, and lawful disposal or disposition of, all Wind Turbines and other structures, hazardous materials, electrical facilities, and all foundations. The plan shall provide for the removal of all access roads. The plan shall provide for the restoration of the Project Parcels to a condition similar to that which existed before construction of the WEF.
- (2) The plan shall provide for the decommissioning of the site upon the expiration or revocation of the WEF Permit, or upon the abandonment of the WEF. The WEF shall be deemed abandoned if its operation has ceased for twelve consecutive months.
- (3) The plan shall include provisions for financial surety to ensure completion of decommissioning and site restoration, in form and amount satisfactory to the Planning Board. A performance bond or a cash escrow account held by the Town with 10% of the estimated cost of decommissioning to be added by the WEF on an annual basis shall be acceptable surety, the total amount to be based on the estimated cost of completing the decommissioning and site restoration in accordance with the approved plan, adjusted for inflation, and as approved by the Planning Board.
- (4) The plan shall include written authorization from the WEF Permittee and all owners of all Project Parcels for the Town to access the Project Parcels and implement the decommissioning and site restoration plan, in the event that the WEF Permittee fails to implement the plan. The written authorization shall be in a form approved by the Planning Board and recorded in the Penobscot County Registry of Deeds.

(o) Mitigation Waiver Agreement

Non-participating Landowners may waive certain specified protections in this Ordinance using a written, legally enforceable Mitigation Waiver negotiated between the wind turbine Applicant and the Non-participating Landowner, who thereby becomes a Participating Landowner. Complete copies of executed Mitigation Waivers must be included with the submission of the WEF Application. The Mitigation Waiver must be recorded in the Penobscot County Registry of Deeds, and describe the benefited and burdened properties. Any subsequent deed must advise all subsequent owners of the burdened property.

(p) Inspections

Wind Turbines shall be inspected after construction is completed but before becoming operational, and at least every two years thereafter, for structural and operational integrity by a Maine licensed professional engineer, and the Owner/operator and/or Licensee shall submit a copy of the inspection report to the Planning Board. If such report recommends that repairs or maintenance are to be conducted, then the Owner/operator and/or Licensee shall provide the Planning Board with a written schedule for the repairs or maintenance. Failure to complete the repairs or maintenance in accordance with the schedule shall be deemed a violation of this Ordinance.

(q) Liability Insurance



The Applicant, Permittee, Owner/operator and Licensee, as applicable, shall maintain a current general liability policy for the WEF that covers bodily injury and property damage in an amount commensurate with the scope and scale of the WEF, and acceptable to the Planning Board, which acceptance shall not be unreasonably withheld. Certificates of insurance shall be provided to the Planning Board annually.

The policy must include the requirement that the Planning Board will be provided at least ten days notice by the policy provider in the case of cancellation or change to the policy. In addition, the Applicant, Permittee, Owner/operator and Licensee, as applicable, must inform the Planning Board of such changes.

(r) Construction Codes

(1) All wiring shall be installed underground according to

(a) The National Electrical Code, 2008 Edition, designated as “NFPA 70-2008” and published by the National Fire Protection Association, and any amendments and/or replacements thereof.

(b) The National Electrical Safety Code, 2007 Edition, published by IEEE, and any amendments and/or replacements thereof.

(c) IEEE Standard 142, “Grounding for Industrial and Commercial Power Systems”, 2007 Edition, published by IEEE, and any amendments and/or replacements thereof.

(2) All construction shall be conducted in accordance with the International Building Code 2006, published by the International Code Council, Inc.

**Section VI - Operational License**

(a) Applications for a WEF Operational License shall be submitted to the Planning Board.

(1) Where an Applicant is applying for a new or amended WEF Site Permit, the application for a WEF Operational License, or amended license, shall be submitted to the Planning Board in conjunction with the Site Permit application, and shall include the application form and the separate fee specified in Section (VII).

(2) Where an Applicant is applying for a WEF Operational License renewal, a new License as the result of transfer of ownership or operation, or reinstatement or modification of an Operational License, the Applicant shall submit an application form, a copy of the existing WEF Site Permit, and the fee specified in Section (VII).

(b) The application for a WEF Operational License shall include the following items:

(1) The Applicant’s name, address and phone number, and the name, address and phone number of the Owner/operator, if different;

(2) An emergency directory for the Owner/operator sufficient to allow the Town to contact the Owner/operator at any time;

- (3) Evidence of the Applicant's technical and financial ability to operate the WEF in accordance with this Ordinance, the Site Permit, and the Operational License;
- (4) For any Project Parcel that is not owned by the Applicant, a copy of any agreement(s) between the owner of the Project Parcel and the Applicant;
- (5) An updated security plan in accordance the requirements of Section (V)(k);
- (6) An updated fire prevention and emergency response plan in accordance with the requirements of Section (V)(l);
- (7) An updated emergency shutdown plan in accordance with the requirements of Section (V)(m);
- (8) An updated decommissioning and site restoration plan in accordance with the requirements of Section (V)(n), including a transfer of financial surety rights from prior License holder;
- (9) Updated liability insurance information in accordance with the requirements of Section (V)(q); and
- (10) A signed statement from the Applicant that the Applicant agrees to assume full responsibility for complying with the provisions of this Ordinance and the Site Permit, including agreeing to continue or complete any duties and obligations of the former Operational License holder under this Ordinance or former Operational License, including, but not limited to, the requirement for post-construction sound measurements, post-construction stray voltage testing, wind turbine inspections, and submission to inspections.

Items (3) through (9) do not need to be duplicated if the Operational License is submitted in conjunction with an application for a Site Permit.

- (c) The Planning Board shall, with assistance from such staff, consultants, committees or commissions as it deems appropriate, determine whether the Application is complete. If an Application is not complete, then the Applicant shall be so advised, and no further action shall be taken by the Planning Board until a complete Application is received.
- (d) After the Planning Board determines that an Application is complete, the Planning Board shall determine whether the Application meets all requirements of this Ordinance. In determining whether the Application meets the requirements of this Ordinance, the Planning Board may obtain assistance from such staff and consultants as it deems appropriate. The Planning Board shall process the Application as soon as reasonable and feasible, given the complexity of the Application, other business facing the Town, staff and other resources, questions that arise during the review process, and other matters affecting the time needed to complete the review process.
- (e) If an Application is complete and meets all requirements of this Ordinance, and the Applicant has paid all fees and costs, then the Planning Board shall approve a WEF Operational License for the WEF. If an Application does not meet all requirements of this Ordinance or the Applicant has not paid all fees and costs, then the Planning Board may deny the Application or approve the Application with conditions that will assure compliance with this Ordinance. If an Application is approved with conditions, then a WEF Operational License for the WEF shall be issued when all

conditions of approval have been satisfied, or, when the Planning Board deems appropriate under the circumstances, the Planning Board may issue a Temporary Operational License for up to 90 days.

### **Section VII - Fees and Costs**

- (a) Preliminary Cost Agreement. At the time an Application for a WEF Site Permit is filed with the Town, the Applicant shall execute for the benefit of the Town an agreement to pay and provide adequate surety guaranteeing payment of the cost of the investigation, review and processing of the Application, including without limitation by way of enumeration, legal, engineering, acoustical, planning, environmental, and staff administrative costs as provided in this Ordinance. The agreement shall provide for the establishment of an escrow account and cash deposit to be provided by the Applicant in an amount deemed sufficient by the Planning Board to begin review under this Ordinance. The Town may use the funds in the escrow account in connection with the application review as allowed by this Ordinance. In the event that the cash deposit in escrow is insufficient to complete the review, the Town shall notify the Applicant that additional funds are necessary and of the amount reasonably believed necessary to complete the review, and the Applicant shall provide the additional funds. The Planning Board shall not begin processing, or in the case of where additional funds are requested, shall not continue processing, the Application until the preliminary cost agreement is approved and signed and until the required surety, or additional surety, and/or funds, are provided to the Town.
- (b) The application fee for a Site Permit shall consist of a base application fee of \$2,500.00, plus \$100.00 for every WT included in the project.
- (c) The application fee for an Operational License is \$1,000.
- (d) The annual fee for an Operational License is \$250.00.

### **Section VIII - Expiration of Site Permit Approval and WEF Operational License**

- (a) If on-site construction of a WEF is not significantly commenced within one year of the date of issue of a Site Permit, the Site Permit shall automatically lapse and become null and void. If an approved WEF is not completed within 30 months after a Site Permit is issued, then the Site Permit shall expire, and the Applicant must reapply. The Planning Board may, for good cause shown, grant a one-time extension of up to six months for either start of construction or completion of construction provided such request is submitted prior to the lapse or expiration of the Site Permit.
- (b) A WEF Operational License issued under this Ordinance shall expire twenty years after the date it is issued, unless earlier terminated.
- (c) A WEF Operational License shall be deemed abandoned if its operation has ceased for twelve consecutive months. An Operational License expires immediately upon abandonment.
- (d) A WEF Operational License shall automatically terminate upon transfer of ownership or operation of the WEF. The proposed new owner or operator shall be required to obtain a new Operational License, which must be in place prior to the transfer of ownership or operation of the WEF.

- (e) A WEF Operational License shall automatically terminate upon any amendment to a Site Permit other than a minor change approved by the Planning Board in accordance with Section V(b)(2).

### **Section IX - Violations, Complaints and Penalties**

- (a) Violations of This Ordinance. It shall be unlawful to construct or operate any WEF or part thereof in violation of any provision of this Ordinance, a WEF Site Permit, or a WEF Operational License; any violation thereof is punishable, upon conviction, in accordance with 30-A M.R.S.A. § 4452(3), and shall include attorneys fees and a penalty to address economic benefit as provided in 30-A M.R.S.A. § 4452(3)(D) and (H). All fines assessed under this Ordinance shall inure to the benefit of the Town of Dixmont . Each day a violation exists or continues shall constitute a separate offense.
- (b) Complaints and Modification, Revocation or Suspension. The Planning Board shall retain continuing jurisdiction to modify, suspend or revoke all WEF Operational Licenses in accordance with this section. Such authority shall be in addition to the Town’s authority to prosecute violations and take other enforcement action.
  - (1) In this section, “violation” means a violation of this Ordinance, or a violation of a WEF Site Permit issued under this Ordinance, or a violation of a WEF Operational License.
  - (2) Any resident of the Town, real property tax-payer to the Town, or Town official may file a written complaint with the Town Clerk alleging that a WEF Permittee, Owner/operator or Licensee has committed or is committing a violation. Such complaints shall be forwarded to the Planning Board.
  - (3) The Planning Board shall preliminarily review the complaint. In connection with its preliminary review, the Planning Board may require the Code Enforcement Officer or other person or persons to conduct such investigations and make such reports as the Planning Board may direct. The Planning Board may request information from the WEF Permittee, Owner/operator and/or Licensee, the complainant, and any other person or entity to assist with its preliminary review.
  - (4) Following its preliminary review, the Planning Board may:
    - A. Dismiss the complaint;
    - B. Refer the complaint to the Town attorney for prosecution; or
    - C. Conduct a public meeting to determine whether the alleged violation(s) have occurred, and what remedial action should be taken. Prior to such meeting, notice of the meeting shall be given to the WEF Permittee, Owner/operator, Licensee, as applicable, and the complainant. The WEF Permittee, Owner/operator, Licensee, as applicable, and the complainant, and any other person, may appear at the meeting and may offer testimony and other relevant evidence, and may be represented by any attorney. If the Planning Board concludes that violations have occurred, the Planning Board shall:

- i. Impose conditions on the WEF Site Permit, Owner/operator and/or Licensee to the extent reasonably necessary to discontinue the violation(s) or avoid any recurrence thereof; or
  - ii. Recommend to the Select Board that the matter be referred to the Town's attorney for prosecution seeking that the WEF Site Permit and/or Operational License be suspended until such time as the WEF Permittee, Owner/operator and/or Licensee presents and implements a plan, satisfactory to the Planning Board that will discontinue the violation(s) or prevent any recurrence thereof, and meets such further conditions as the Planning Board deems appropriate to discontinue and prevent further violations; or
  - iii. Recommend to the Select Board that the matter be referred to the Town's attorney for prosecution seeking that the WEF Site Permit and/or Operational License be revoked and that decommissioning of the WEF be directed, if the Planning Board concludes that no reasonable modification can be made to the WEF to discontinue or prevent violations; or
  - iv. Refer the matter to the Select Board and Town's attorney for prosecution, subject to Planning Board and Select Board approval; or
  - v. Take no action, if the Planning Board concludes that no further action is needed to discontinue or prevent violations, and that prosecution is unwarranted.
- D. Following any such hearing, the Planning Board's written decision shall be furnished to the WEF Permittee, Owner/operator and/or Licensee, as applicable, and to the complainant.
- E. An appeal from the decision of the Planning Board may be taken to the Appeals Board by the WEF Permittee, Owner/operator or Licensee, or a complainant. Such appeal must be in writing and must specify the grounds thereof, and must be filed with the Town Clerk within 30 days after the final action of the Planning Board. The Town Clerk shall provide any appeal to the Appeals Board. The Appeals Board shall fix a reasonable time for the hearing of the appeal, and shall give public notice thereof as well as due notice to the WEF Permittee, Owner/operator and/or Licensee, as applicable, and the complainant. The action of the Planning Board shall be sustained unless the Appeals Board, by a favorable vote of the majority of all members of the Appeals Board, reverses or modifies the Planning Board's determination.
- F. An appeal from a decision of the Board of Appeals shall be made to Superior Court in accordance with M.R.Civ.P. 80B.

## **Section X - Maintenance, Amendments, and Miscellaneous Requirements**

- (a) A WEF shall be constructed, operated, and maintained, and repaired in accordance with the approved Site Permit, Operational License, and this Ordinance. Where a standard or requirement

is not provided by either this Ordinance, the WEF Site Permit or the WEF Operational License, the WEF Permittee and Licensee shall comply with Good Utility Practices.

- (b) All components of the Wind Turbine Project shall conform to relevant and applicable local, state and national building codes.
- (c) A WEF Permittee may apply to the Planning Board for changes to a WEF Site Permit or Operational License. The Application shall describe the requested change or changes. The Planning Board shall review the Application and determine what provisions of this Ordinance and Appendix will apply to the Application. The Application will then be processed in accordance with all provisions of this Ordinance deemed to be applicable by the Planning Board. The provisions of Section (VII), together with all other instances where this Ordinance outlines financial obligations of the Applicant, Permittee, Owner/operator and Licensee shall apply to any Application for changes to a WEF Site Permit or Operational License. An Application for changes will be required for any significant modification to the approved WEF Permit, including, but not limited to: any change in the number of WTs; any change in WT height, location, design, or specification; or any substantive change to any required plan or insurance coverage.
- (d) The WEF Permittee, Owner/operator and/or Licensee, as applicable, shall notify the Town of any extraordinary event as soon as possible, and in no case more than 12 hours after the event. “Extraordinary events” shall include but not be limited to tower collapse, catastrophic turbine failure, fires, leakage of hazardous materials, unauthorized entry to the tower base, thrown blade or hub, any injury to a Facility worker or other person that requires emergency medical treatment, or other event that impacts the health and safety of the Town or its residents.
- (e) Approval of a WEF Permit under this Ordinance does not exempt an Applicant from obtaining other applicable permits from the Town of Dixmont, such as building, electrical, plumbing and shoreland zoning permits, as applicable, or any applicable state or federal permit.

#### **Section XI - Severability; Conflicts with Other Ordinances, Laws, and Regulations; Appeal**

- (a) If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by reason of any decision of any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause or phrase or part thereof. The Town hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, phrase or part thereof even if any one or more sections, subsections, sentences, clauses, phrases or parts thereof may be declared invalid or unconstitutional.
- (b) Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other Town Ordinance, or Federal or State of Maine rule, regulation or statute, the more restrictive provision shall apply.
- (c) Except as provided in Section (IX)(b)(4)(E), an aggrieved party may appeal a decision of the Planning Board to Superior Court in accordance with M.R.Civ.P. 80B.

#### **Section XII - Ethical Standards**

- (a) Transparency, Public Participation and Highest Ethical Standards

All public deliberations and decisions regarding Wind Energy Facilities shall be conducted in an open, transparent manner that encourages the broadest public participation and adherence to the highest ethical standards.

(b) Public Access

All deliberations concerning Wind Energy Facility Projects, whether in writing or conducted verbally, by the Planning Board, Selectman, Appeals Board, and any other subcommittees or working groups of the afore mentioned bodies shall fully comply with the letter and spirit of State law regarding Freedom of Access pursuant to Title 1; Chapter 13; Subchapter 1. Specifically, all deliberations regarding Wind Energy Facilities between members of the Planning Board, Selectmen, Appeals Boards and any subcommittees and working groups shall be conducted at public meetings for which notice has been duly given. Exceptions will be made only for: 1) appropriately recorded and executed executive sessions; and 2) communicating the minimal information necessary to set up and facilitate public meetings. Minutes of deliberations and decisions concerning Wind Energy Facilities will be maintained and filed in the Dixmont Town Office. Copies of all correspondence and e-mails will be made available to the public with the exception of those publically identified and disclosed as being subject to “attorney-client privilege” by the Town attorney. All documents, correspondence and e-mails generated by consultants on behalf of the Planning Board, the Selectmen, Appeals Board, their subcommittees and working groups shall be part of the public record.

(c) Conflicts of Interest

The process to develop and permit Wind Energy Facility Projects shall be governed by a strict ethical code for conflicts of interest. No elected or appointed Town official or Town employee, their immediate family members, or their employees, who has a conflict of interest shall be directly or indirectly involved in the planning process or decision-making process for Wind Energy Facility Projects. Conflicts of interest include, but are not limited to:

- (1) having right, title or interest in a Project Parcel;
- (2) having a financial arrangement with an individual or company which derives income from the development of wind energy, including a signed Mitigation Waiver with financial remuneration;
- (3) serving as a paid representative of an individual or company which derives income from the development of wind energy, or a written or verbal promise for future employment or contracts from a wind development company;
- (4) being directly or indirectly affiliated as an Applicant with a pending Application for a Wind Energy Facility Project;
- (5) knowing that there is a substantial opportunity to accept bids, receive remuneration, or employment valued at greater than \$1,000 on behalf a wind development company.

Individuals with a conflict of interest must identify the conflict of interest and recuse themselves from all direct and indirect planning and decision-making regarding Wind Energy Facility Projects, with the exception of voting and debating as a private citizen at any public meeting and public hearings.

### **Section XIII - Effective Date**

This Ordinance shall take effect immediately upon passage.

### **Appendix**

#### **(a) Introduction**

The purpose of this Appendix is to describe the requirements for pre-construction and post-construction sound and vibration monitoring. Determining the sound and vibration impacts is a highly technical undertaking and requires a serious effort in order to collect reliable and meaningful data for both the public and decision-makers.

This protocol is based in part on criteria published in American National Standards S12.9 - Quantities and Procedures for Description and Measurement of Environmental Sound, and S12.18 for the measurement of sound pressure level outdoors. Where there are differences between the procedures and definitions of this document and ANSI standards, this document shall apply. Where a standard's requirements may conflict with other standards or with this document, the most stringent requirements shall apply. IEC 61400-11 procedures are not suitable for enforcement of these requirements except for the presence of tones.

#### **(b) Instrumentation**

All instruments and other tools used to measure audible, inaudible and low frequency sound shall meet the requirements for ANSI or IEC Type 1 Integrating Averaging Sound Level Meter with one-third octave band analyzer with frequency range from 6.3 Hz to 20k Hz and capability to simultaneously measure dBA LN and dBC LN. The instrument must also be capable of measuring low level background sounds down to 20 dBA, and must conform, at a minimum, to the requirements of ANSI S1.43-1997. Measurements shall only be made with the instrument manufacturer's approved wind screen. A compatible acoustic field calibrator is required with certified  $\pm 0.2$  dB accuracy. Portable meteorological measurement requirements are outlined in ANSI S12.9 Part 3 and are required to be located within 5 meters of the sound measuring microphone. The microphone shall be located at a height of 1.2 to 1.5 meters for all tests unless circumstances require a different measurement position. In that case, the reasons shall be documented and include any adjustments needed to make the results correspond to the preferred measurement location.

#### **(c) Pre-construction Sound Measurement and Study**

An assessment of the sound environment in the area surrounding the proposed WEF is necessary in order to predict the impact of a proposed project. The following guidelines shall be used in developing an estimate of an area's pre-construction sound environment. All testing is to be performed by a Qualified Independent Acoustical Consultant chosen by the Planning Board. The Applicant may file objections detailing any concerns it may have with the Planning Board's



selection. These concerns will be addressed in the study. Objections must be filed prior to the start of the sound study. Test results and the study will be reported to the Planning Board.

#### (1) Location of Measurement Points for Pre-construction Sound Measurement

Sites to be used as Measurement Points shall be selected as follows.

A. Sites should not be located near large objects, such as buildings. The distance to buildings or other structures should be twice the largest dimension of the structure, if possible.

B. The sites shall include those locations anticipated to have the highest sound emissions of the proposed WEF.

C. The sites shall include those locations where the background soundscape is quietest.

D. The sites shall include locations along the property line(s) of Project Parcel(s) and Participating Parcel(s). The intent is to anticipate the locations along the property line(s) that will receive the highest sound emissions. The Applicant and the owner of relevant Project Parcel(s) and Participating Parcel(s) must provide access to allow measurements to be taken. The Permit will not be approved if such access is refused. Mitigation Waivers for any parcel(s) do not eliminate the requirement that access be provided.

E. The sites shall include locations selected to represent the sound level at all Sensitive Receptors located within 1.5 miles of the boundaries of the proposed WEF.

F. Sites shall be located with the assistance of the Planning Board and property owner(s).

G. Additional sites may be chosen by the Consultant conducting the study if these sites will improve the accuracy of the study's conclusions.

#### (2) Conditions under which Measurements are to be Taken

At each Measurement Point, information will be gathered under the conditions specified.

A. The duration of each measurement shall be ten continuous minutes for each quantity listed in Part c(3)A, below, at each location. Longer-term tests are not appropriate. In most cases, it should be possible to derive all values described in Part c(3)A from a single ten minute sample. The duration must include at least six minutes that are not affected by transient sounds from near-by and non-natural sources. Multiple ten minute samples over longer periods may be used to improve the reliability, in which case the quietest ten minute sample will be used.

B. Measurements shall be taken during the times of day and night expected to be have the quietest background sound level, as appropriate for the site. The preferred nighttime testing time for background sound levels is from 10 pm until 4 am. If circumstances indicate that samples should be taken at a different time, then the test may be conducted at an alternate time, if approved by the Planning Board.

C. Measurements must be made on a week-day of a non-holiday week. Week-end measurements may be taken at selected sites where there are weekend activities that may be affected by WT sound.

D. Measurements must be taken at 1.2 to 1.5 meters above the ground and at least 15 feet from any reflective surface, following ANSI S12.9 Part 3 protocol together with any other requirements found in this Ordinance.

E. Measurements taken when the wind speeds exceed two meters per second (4.5 miles per hour) at the microphone location are not valid. A windscreen of the type recommended by the monitoring instrument manufacturer must be used for all data collection.

F. All elements of any pre-existing WEF, whether operated by the current Applicant or some other party, must be turned off for the duration of background sound level measurements. Willingness of the Applicant to abide by this condition for any future Applicants is a requirement of Permit approval.

### (3) Quantities to be Measured

At each Measurement Point, the following information will be gathered, at a minimum, and provided as part of the Study.

A.  $L_{eq}$ ,  $L_{10}$  and  $L_{90}$ , each to be given in dBA and in dBC.  $L_{90}$  is the value for the quietest continuous minute of a continuous ten minute period,  $L_{10}$  is the value for the loudest continuous minute of a continuous ten minute period, and  $L_{eq}$  is the average value over the entire ten minute period. To distinguish these values from their post-construction counterparts, these values may be denoted  $L_{eq}(pre)$ ,  $L_{10}(pre)$  and  $L_{90}(pre)$ , with an "A" or a "C", depending on the weight. For instance,  $L_{10A}(pre)$  means the A-weighted preconstruction measurement of  $L_{10}$ . The ten minute period shall be considered invalid if either

- i.  $L_{10A}$  minus  $L_{90A}$  is greater than 10 dBA; or
- ii.  $L_{10C}$  minus  $L_{90C}$  is greater than 15 dBC.

B. One-third octave band sound pressure levels, averaged over each ten minute sample.

C. A narrative description of any intermittent sounds registered during each measurement.

D. A narrative description of the steady sounds that form the background soundscape.

E. Digital recording of all data, sampled at a rate of at least 44,100 Hz with signed 16 bit Pulse Code Modulation, as described in IEC 60908, and measured using a recording instrument meeting ANSI S1.4. This may be augmented with video recordings.

F. Wind speed and direction, humidity and temperature, together with the corresponding information from the nearest ten meter weather reporting station.

#### (4) Information to be supplied by the Applicant

The Applicant must provide the following information.

A. The make and model of all WT units to be installed in the WEF.

B. The sound power of all WT units to be installed in the WEF, expressed in watts, and abbreviated as  $L_w$ . This information must have been determined for the WT manufacturer under laboratory conditions specified by IEC 61400-11, and provided to the Applicant. It cannot be assumed that these values represent the highest sound output for any operating condition; they reflect the operating conditions necessary to meet the IEC 614100-11 requirements. The lowest frequency for acoustic power ( $L_w$ ) required in IEC 61400-11 is 50 Hz. This Ordinance requires wind turbine certified acoustic power ( $L_w$ ) levels at rated load for the total frequency range from 6.3 Hz to 10,000 Hz, in one-third octave frequency bands tabulated to the nearest 0.1 dB.

C. Any additional information that the Consultant reasonably deems necessary to fulfill the requirements in Part c(5), below.

D. The burden is on the Applicant to provide sufficient information to establish that operation of the WEF will meet the requirements of this Ordinance.

#### (5) Required Elements of the Study

The purpose of the study is, first, to establish a consistent and scientifically sound procedure for evaluating existing background levels of audible and low-frequency sound; and, second, to determine whether the proposed WEF will meet the conditions set forth in Section (V) The characteristics of the proposed WEF and the features of the surrounding environment will influence the design of the study. Site layout, types of WES/WT

selected and the existence of other significant local audible and low frequency sound sources and Sensitive Receptors should be taken into consideration.

Determining whether the proposed WEF will meet the conditions set forth in this Ordinance requires that the Consultant predict the postconstruction sound level of the proposed WEF. At each Measurement Point, the Consultant must estimate values for  $L_{90}$ ,  $L_{10}$  and  $L_{eq}$ , both A-weighted and C-weighted, for a total of six values at each Measurement Point. These pre-construction estimates of the post-construction sound level will be denoted  $L_{90}(\text{post})$ ,  $L_{10}(\text{post})$  and  $L_{eq}(\text{post})$ , each of which may have an “A” or a “C” to indicate the method of weighting.

In determining these post-construction values, the Consultant should assume worst-case conditions for producing sound emissions. The assumed wind speed shall be the speed that results in the worst-case (i.e., highest) dBA and dBC sound levels in the area surrounding the WEF. The wind direction shall be taken to be the dominant wind direction in each season. If other wind directions may cause levels to exceed those of the predominant wind direction at Sensitive Receptors, then these levels and conditions shall be considered in the Study. To accommodate enforcement under weather conditions where this is a significant difference between the wind speed at ground-level and at hub-height, any predictive model shall assume that the winds at hub-height are sufficient for the highest sound emission, even though the enforcement tests will be with ground-level wind speeds of ten miles per hour or less.

In the event that there are several pending Permit Applications, or preexisting WEF(s), the estimated post-construction values shall be the combined predicted output of all proposed or existing WEFs. All of these WEFs will be treated using the same methodology to arrive at combined value for the predicted post-construction sound level.

Each additional WEF adds to the sound-burden of a community. If the contribution to sound levels of a proposed WEF, together with the sound generated by pre-existing WEFs would raise sound levels beyond the limits of this Ordinance, then the proposed WEF will not be approved.

At a minimum, the study shall include the following information, and meet the following requirements.

A. The study shall address conditions in all four seasons, and it is required that measurements be taken at each Measurement Point at least once in each of the four seasons. The quietest period of each season should be chosen for measurement.

B. The study may be based on computer models, but shall include a description of all assumptions made in the model's construction and algorithms. This description must be sufficient to allow an independent third party to verify the conclusions of the study. If the model does not consider the effects of wind direction, worst-case weather, operating conditions, geography of the terrain, and/or the effect of

reinforcement from coherent sounds or tones from the turbines, then these shortcomings must be identified and other means used to adjust the model's output to account for these factors.

C. The minimum and maximum distance between any Measurement Points.

D. The distance between each Measurement Point and any significant local sound sources.

E. The predicted sound pressure levels for each of the 1/1 octave bands as un-weighted dB in tabular form from 6.3 Hz to 10,000 Hz. This should be given for a set of locations throughout the study area deemed by the Consultant and Planning Board to be representative.

F. Eight iso-contour maps shall be included, two for each season, showing the level of pre-construction background sound, as given by  $L_{90}A(\text{pre})$  and  $L_{90}C(\text{pre})$ . These maps shall extend to a minimum of 1.5 miles beyond the perimeter of the project boundary, and may be extended to a distance of more than 1.5 miles at the discretion of the Planning Board. The scale shall be such as to allow individual Measurement Points and Sensitive Receptors to be distinguished.

G. Eight iso-contour maps shall be included, two for each season, showing the level of post-construction sound, as given by  $L_{\text{eq}}A(\text{post})$  and  $L_{\text{eq}}C(\text{post})$ . These maps shall cover the same area and use the same scale as those in (F).

H. Eight iso-contour maps shall be included, two for each season. Four of these maps shall show the value of  $L_{\text{eq}}A(\text{post})$  minus  $L_{90}A(\text{pre})$ , one map for each season; and four maps shall show  $L_{\text{eq}}C(\text{post})$  minus  $L_{90}A(\text{pre})$ , one map for each season. These maps shall cover the same area and use the same scale as those in (F).

I. All maps shall use of contour interval of no more than 5 dB, and shall extend out, at a minimum, to distance sufficient to show the 30 dBA or 40 dBC boundary, whichever is greater.

J. Maps shall show the location of a Measurement Points, sources of any significant local non-WEF sound or vibration, and the location of all Sensitive Receptors, including, but not limited to, schools, daycare centers, hospitals, residences, places of worship, and elderly care facilities.

K. A map shall be included that shows the layout of the project area, including topography, the project boundary lines and property lines.

L. Any additional information that the Consultant and Planning Board reasonably believe will aid in making a more informed decision as to whether the proposed WEF will meet the requirements of this Ordinance.

(d) Post-construction Sound Measurement and Study

Post-construction sound studies require two sets of measurements. One set of measurements shall be gathered using the same methodology as outlined in Part (c), above. These measurements may be referred to as the “WEF-Off Measurements.” The second set of measurements shall be gathered as set forth in this Part (d), and may be referred to as the “WEF-On Measurements”. The WEF-On Measurement Points shall be the same as those used as WEF-On Measurement Points. All testing is to be performed by a Qualified Independent Acoustical Consultant chosen by the Planning Board.

At the discretion of the Planning Board, the pre-construction sound measurements, taken in Part (c), can be substituted for the WEF-Off Measurements if a random sampling of 10% of the pre-construction study sites shows that  $L_{90A}$  and  $L_{90C}$  levels have not changed by more than  $\pm 5$  dB when measured under the same meteorological conditions.

If there have been any complaints about WEF sound or low frequency sound by any resident of an occupied dwelling, then a location or locations on that property will be included in the WEF-Off and WEF-On Measurement Points.

This location(s) will be selected jointly by the complainant and Consultant. In addition, the Consultant and Planning Board may include additional Measurement Points where they reasonably believe that doing so will improve the accuracy of the study.

The WEF-On Measurements shall be taken under the conditions listed below, and the quantities measured shall be as specified in Part c(3), above.

- (1) The duration of each measurement shall be ten continuous minutes for each quantity listed in Part c(3)A, above, at each location. The duration must include at least six minutes that are not affected by transient sounds from near-by, non-natural, non-WEF sources. Multiple ten minute samples over longer periods may be used to improve the reliability.
- (2) Measurements must be taken at 1.2 to 1.5 meters above the ground and at least 15 feet from any reflective surface, following ANSI S12.9 Part 3 protocol together with any other requirements found in this Ordinance.
- (3) Measurements must be taken with the wind speed at hub-height sufficient for full operating capacity, and at two meters per second (4.5 miles per hour) or less at the microphone location. Conditions should reflect the loudest sound emissions from the WEF. For purposes of enforcement, the wind speed and direction at the WT blade height shall be selected to reproduce the conditions leading to the enforcement action. A windscreen of the type recommended by the monitoring instrument manufacturer must be used for all data collection.

The Consultant shall provide a study including the same information and meeting the same requirements as the pre-construction sound study described in Part c(5), except that the values for  $L_{90}(\text{post})$ ,  $L_{10}(\text{post})$  and  $L_{\text{eq}}(\text{post})$  (both A-weighted and C-weighted) shall be taken to be the measured WEF-On values.

For the purposes of enforcement, the post-construction values of  $L_{90}A(\text{post})$ ,  $L_{90}C(\text{post})$ ,  $L_{10}A(\text{post})$ ,  $L_{10}C(\text{post})$ ,  $L_{\text{eq}}A(\text{post})$  and  $L_{\text{eq}}C(\text{post})$  are defined to be equal to the measured WEF-On value of each quantity.

## REFERENCES

### **ANSI/ASA S12.9-1993/Part 3 (R2008) - American National Standard Quantities and Procedures for Description and Measurement of Environmental Sound, Part 3: Short-Term Measurements with an Observer Present.**

This standard is the second in a series of parts concerning description and measurement of outdoor environmental sound. The standard describes recommended procedures for measurement of short-term, time-average environmental sound outdoors at one or more locations in a community for environmental assessment or planning for compatible land uses and for other purposes such as demonstrating compliance with a regulation. These measurements are distinguished by the requirement to have an observer present. Sound may be produced by one or more separate, distributed sources of sound such as a highway, factory, or airport. Methods are given to correct the measured levels for the influence of background sound. For the purposes of this Ordinance the options that are provided in ANSI S12.9-Part 3 (2008) shall be applied with the additional following requirements:

#### **Wind Turbine Siting Acoustical Measurements ANSI S12.9 Part 3 Selection of options and other requirements**

- 4.2 background sound: Use definition (1) 'long-term
- 4.3 long-term background sound: The  $L_{90}$  excludes short term background sounds
- 4.4 basic measurement period: Ten (10) minutes  $L_{90}$  (10 min)
- 4.5 Sound Measuring Instrument: Type 1 integrating meeting ANSI S1.43
- 6.5 Windscreen: Required
- 7.1 Long-term background sound
- 7.2 Data collection Methods: Second method Observed samples to avoid contamination by short term sounds (purpose: to avoid loss of statistical data)

8 Source(s) Data Collection: All requirements in ANSI S12.18 Method #2 precision to the extent possible while still permitting testing of the conditions that lead to complaints.

8.3(a) All meteorological observations required at both (not either) microphone and nearest 10m weather reporting station.

8.3(b) For a 10 minute sound measurement to be valid the wind velocity shall not exceed 2m/s (4.5 mph) measured less than 5m from the microphone. Compliance sound measurements shall not be taken when winds exceed 2m/s.

8.3(c) In addition to the required acoustic calibration checks the sound measuring instrument internal noise floor must also be checked at the end of each series of ten minute measurements and no less frequently than once per day. Insert the microphone into the acoustic calibrator with the calibrator signal off. Record the observed dBA and dBC reading from the sound level meter or other recording instrument to determine an approximation of the instrument self noise. This calibrator covered microphone must demonstrate that the results of this test are at least 5 dB below the immediately previous ten minute acoustic test results for the acoustic data to be valid. This test is necessary to detect undesired increase in the microphone and sound level meter internal self noise. As a precaution sound measuring instrumentation should be removed from any air conditioned space at least an hour before use. Nighttime measurements are often performed very near the dew point. Minor moisture condensation inside a microphone or sound level meter can increase the instrument self noise and void the data.

8.4 to the end: The remaining sections of ANSI S 12.9 Part 3 Standard do not apply.

### **ANSI S12.18-1994 (R2004) American National Standard Procedures for Outdoor Measurement of Sound Pressure Level**

This American National Standard describes procedures for the measurement of sound pressure levels in the outdoor environment, considering the effects of the ground, the effects of refraction due to wind and temperature gradients, and the effects due to turbulence. This standard is focused on measurement of sound pressure levels produced by specific sources outdoors. The measured sound pressure levels can be used to calculate sound pressure levels at other distances from the source or to extrapolate to other environmental conditions or to assess compliance with regulation. This standard describes two methods to measure sound pressure levels outdoors. METHOD No. 1: general method; outlines conditions for routine measurements. METHOD No. 2: precision method; describes strict conditions for more accurate measurements. This standard assumes the measurement of A-weighted sound pressure level or time-averaged sound pressure level or octave, 1/3-octave or narrow-band sound pressure level, but does not preclude determination of other sound descriptors.

### **ANSI S1.43-1997(R2007) American National Standard Specifications for Integrating Averaging Sound Level Meters**



This Standard describes instruments for the measurement of frequency-weighted and time-average sound pressure levels. Optionally, sound exposure levels may be measured. This standard is consistent with the relevant requirements of ANSI S1.4-1983(R 1997) American National Standard Specification for Sound Level Meters, but specifies additional characteristics that are necessary to measure the timeaverage sound pressure level of steady, intermittent, fluctuating, and impulsive sounds.

### **ANSI S1.11-2004 American National Standard 'Specification for Octave-Band and Fractional-Octave-Band Analog and Digital Filters'**

This standard provides performance requirements for analog, sampled-data, and digital implementations of bandpass filters that comprise a filter set or spectrum analyzer for acoustical measurements. It super-cedes ANSI S1.11-1986 (R1998) American National Standard Specification for Octave-Band and Fractional-Octave-Band Analog and Digital Filters, and is a counterpart to International Standard IEC 61260:1995 Electroacoustics - Octave-Band and Fractional-Octave-Band Filters. Significant changes from ANSI S1.11-1986 have been adopted in order to conform to most of the specifications of IEC 61260:1995. This standard differs from IEC 61260:1995 in three ways: (1) the test methods of IEC 61260 clauses 5 is moved to an informative annex, (2) the term 'band number', not present in IEC 61260, is used as in ANSI S1.11-1986, (3) references to American National Standards are incorporated, and (4) minor editorial and style differences are incorporated.

### **ANSI S1.400-2006 American National Standard Specifications and Verification Procedures for Sound Calibrators**

#### **IEC 60908 Audio Recording – Compact disk digital audio system**

Applies to a pre-recorded optical reflective digital audio disc system. Defines those parameters of compact discs that affect interchangeability between discs and players. Is also intended as a reference for manufacturers wishing to produce discs and/or players that conform to the system described.

#### **IEC 61400-11**

Second edition 2002-12, Amendment 1 2006-05

#### **IEC 61400-11**

Second edition 2002-12, Amendment 1 2006-0

#### **Wind turbine generator systems -Part 11: Acoustic noise measurement techniques**

The purpose of this part of IEC 61400 is to provide a uniform methodology that will ensure consistency and accuracy in the measurement and analysis of acoustical emissions by wind turbine generator systems. The standard has been prepared with the anticipation that it would be applied by:

- the wind turbine manufacturer striving to meet well defined acoustic emission performance requirements and/or a possible declaration system;
- the wind turbine purchaser in specifying such performance requirements;
- the wind turbine operator who may be required to verify that stated, or required, acoustic performance specifications are met for new or refurbished units;
- the wind turbine planner or regulator who must be able to accurately and fairly define acoustical emission characteristics of a wind turbine in response to environmental regulations or permit requirements for new or modified installations.

This standard provides guidance in the measurement, analysis and reporting of complex acoustic emissions from wind turbine generator systems. The standard will benefit those parties involved in the manufacture, installation, planning and permitting, operation, utilization, and regulation of wind turbines. The measurement and analysis techniques recommended in this document should be applied by all parties to insure that continuing development and operation of wind turbines is carried out in an atmosphere of consistent and accurate communication relative to environmental concerns. This standard presents measurement and reporting procedures expected to provide accurate results that can be replicated by others.